

# KELVIN CHIA YANGON

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## MYANMAR NATIONAL PROJECT BANK FOR STREAMLINING PPP PROPOSALS LAUNCHED

The Office of the President of Myanmar, in November 2018, issued the Notification No. 2/2018 (“**the Notification 2/2018**”), tasking the Ministry of Planning and Finance (“**MOPF**”) with the creation of the Project Bank for consolidation of projects to be implemented by various government agencies, and to ensure that prioritization and implementation of the projects are in line with the Myanmar Sustainable Development Plan, and to achieve better coordination and transparency for projects.

News about Project Bank has been heard since last year. It is believed that it will provide a clear guideline and pathway for how government will handle public infrastructure development projects. It is anticipated that Project Bank will implement a Public Investment Program to facilitate major Private Public Partnership (“**PPP**”) Proposals.

In accordance with the Notification 2/2018, projects from governmental agencies to be implemented with government's budget, development assistance, through public-private partnerships, through privatization of state-owned enterprises, or through other mechanisms are to be included in the Project Bank. The various governmental agencies are required to submit to the Project Bank the projects they wish to implement that are a part of the Myanmar Sustainable Development Plan. The Project Bank will serve as a centralized database for such projects, with the intention of achieving better coordination, transparency and effectiveness in achieving the objectives of the Myanmar Sustainable Development Plan.

The MOPF is responsible for the creation of the Project Bank through coordinating with various governmental agencies, determining the projects to be included in the Project Bank, creating a web-based publicly available database, updating the Project Bank on a quarterly basis and reporting to the National Economic Coordination Committee of the status of the Project Bank. The governmental agencies are to submit to the MOPF relevant information on the proposed projects and the MOPF is tasked with developing screening tools to determine whether a particular project from a government agency meets the criteria for inclusion in the Project Bank. For projects included in the Project Bank, the MOPF is responsible for publicizing the projects through web-based publicly accessible database, as well as through other means.

### **Public Private Partnership Center (“PPP Center”)**

In addition to the creation of the Project Bank, the Notification 2/2018 also stipulated the creation of a PPP Center under the MOPF, aimed at strengthening the capabilities of the government agencies to effectively identify, develop, procure, implement, monitor, and audit Public-Private Partnership projects (“**PPP Projects**”), and the PPP Center was created with the issuance of a separate notification on 24 December 2018. The PPP Center is charged with facilitating the identification and development of PPP projects, managing the Project Bank related to PPP Projects, developing requirements, guidelines, templates and procedures for identification, preparation, bidding and management of PPP Projects, monitoring and reporting on PPP Projects as it receives reports of the PPP Projects from the implementing government agencies, and investigating and recommending PPP

Policy reforms. The Notification 2/2018 stipulates that the implementing governmental agencies are required to implement a tender process for the election of the successful bidder for the PPP Project, and to provide reasonable time to all bidders to examine relevant documentation and prepare their respective proposals. The PPP Center is currently preparing the detailed requirements, guidelines, templates, and procedures on PPP project procurements based on the framework provided by the Notification 2/2018, and the President Office's Notification No. 1/2017 on government procurements.

The Notification 2/2018 specified that for PPP projects exceeding US\$ 100 million in value, the implementing government agency is required to obtain the approval of the Union Government. In the case of projects not exceeding US\$ 100 million, under the Notification 2/2018, the approval of the Union Government is not required, and the implementing government agency may implement the project following the implementation of a tender process as described in the Notification 2/2018, and other guidelines on the preparation of the tender processes as the PPP Center may issue in the future.

### **Unsolicited PPP Proposals**

The Notification 2/2018 also stipulates procedures for assessing unsolicited PPP Proposals. When a government agency receives an unsolicited proposal that exceeds 2 billion Kyats in value, the government agency is required to seek the advice of the PPP Center whether it should be included in the Project Bank. When the value of the project from the unsolicited proposal does not exceed the value of 2 billion Kyats, it is not mandatory for the government agency to discuss with the PPP Center on whether or not to include the project in the Project Bank, but the implementing governmental agency is still required to abide by the Notification 2/2018 relating to dealing with unsolicited PPP Proposals, as discussed below.

When a government agency wishes to pursue upon an unsolicited proposal that it had received, whether the value of the project exceeds 2 billion Kyats or not, the government agency that intends to implement it is required to prepare a Swiss Challenge tender process. The relevant government agency may also request the assistance of the PPP Center for the preparation of the tender process. In calling for the tender, when a competitive proposal is received that is superior to the original unsolicited proposal, the relevant government agency is required to notify the original proponent of the unsolicited proposal and provide at least 45 working days to match the competing proposal or to provide a proposal that is superior to the competing proposal. If the original proponent is not able to match the competing offer, the relevant government agency will select the competing proponent to negotiate and enter into an agreement.

The Notification 2/2018 also provided that if the PPP Center and the relevant government agency determines that a tender process could not secure more favorable commercial and technical terms, the private party proposing the unsolicited proposal could be awarded directly. It should be noted, however, that the provisions relating to unsolicited proposals in the Notification 2/2018 are not applicable to greenfield projects in energy and mining sectors.

### **Funding for PPP Projects**

PPP Projects may be implemented either by the government's budget, or through development assistance. The PPP Center is responsible for assessing potential government's contributions on a particular PPP project and to advice the relevant government agency implementing the PPP Project. The Notification 2/2018 specified that government's contribution to a project may take the form of capital from the government's budget, government bonds, in-kind contributions, or other forms. The Notification 2/2018 also stated that only PPP projects selected through competitive tender process or Swiss Challenge tender process are able to seek the government's support in terms of guarantees, viability gap funding, or other forms of government support, and that the PPP Center is responsible for establishing the criteria for potential government support for a PPP Project.

### **Transferring of State-owned Economic Enterprises to Private Sector**

Under the Notification 2/2018, a government agency may submit to the MOPF a request to include a transfer of State-owned Economic Enterprise ("SOEE") to the private sector, in parts or whole, in the Project Bank. This process may take place through equitization or through a PPP Mechanism. The PPP Center is responsible for assisting the relevant governmental agency to go through the proper corporatization, equitization, or PPP mechanisms. In case of equitization of a SOEE, the MOPF is to be listed as the shareholder for the shares allotted to the government. The Notification 2/2018 also requires that in the valuation of the SOEE, an independent valuation company or qualified consultants are required to issue a certificate of valuation based on the following:

1. Current value of the SOEE or its assets as a going concern,
2. In situation where the enterprise or assets are not a going concern, the valuation is required to be based on net asset value, or
3. Any other prudent valuation method as approved by the PPP Center.

## Implementation and status of the Project Bank

While the Project Bank was announced during the Invest Myanmar 2019 held in Nay Pyi Taw on 28 and 29 January 2019, following the issuance of the Notification 2/2018 on 30 November 2018, preparations to make the Project Bank accessible online are being undertaken at the moment.

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