

Presidential Regulation Number 66 Year 2024: New Method of Recycling Infrastructure Assets

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On July 2nd 2024, the Government issued Presidential Regulation Number 66 Year 2024 (“PR 66/2024”) on the Amendment of Presidential Regulation Number 32 Year 2020 (“PR 32/2020”) on Infrastructure Financing Through Limited Concession Scheme (*Pembiayaan Infrastruktur Melalui Hak Pengelolaan Terbatas*), which aims to further support the participation of business entities in the limited concession scheme, allowing State-owned Enterprises (“SOE”) and Central Government to secure financing for the provision of infrastructure.¹

Theoretically, under a Limited Concession Scheme (“LCS”), the Project Owner/Contracting Agency (*Penanggung Jawab Proyek Kerjasama* or “GCA”) as the infrastructure asset owner, transfers the right to operate the infrastructure asset to a private concessionaire whilst in return, the GCA receives an upfront fee which can then be used for another infrastructure development.² Since the enactment of PR 32/2020, the LCS scheme has frequently been implemented in the toll road sector.³

This article will elaborate key updates and outstanding matters which must be taken into account by stakeholders in implementing LCS going forward.

1. Available Sectors and LCS Criteria

PR 66/2024 expands the infrastructure sectors available for optimisation under the LCS scheme from 9 (nine) sectors to 13 (thirteen) sectors as follows:⁴

Transportation (ports, airports, railways, and bus terminals)	Toll Road	Water Resource Infrastructure	Housing	Government Building Offices
Drinking Water Supply System	Wastewater Management System	Waste Management System	Regional Infrastructure (Infrastruktur Kawasan)	Health
Telecommunication and Information	Electricity	Oil & Gas and Renewable Energy	Tourism	additional infrastructure sectors under PR 66/2024

Furthermore, PR 66/2024 provides a further mechanism for LCS to apply to the implementation of other infrastructure sectors by which the GCA will propose the other infrastructure sector to the Coordinating Minister for the Economy acting as Head of the Committee for Acceleration of Priority Infrastructure Delivery (*Komite Percepatan Penyediaan Infrastruktur Prioritas* or “KPPIP”). The Coordinating Minister for the Economy will then approve the proposal based on a KPPIP determination/meeting.⁵

¹ Recitals of PR 66/2024.

² [KPBU - Asset Recycling dalam Proyek KPBU: Strategi untuk Pembangunan Infrastruktur yang Berkelanjutan? \(kemenkeu.go.id\)](https://www.kemenkeu.go.id/). Also see: Article 8 PR 32/2020.

³ *Ibid.*

⁴ Article 3 paragraph (1) of PR 66/2024.

⁵ Article 3 paragraph (2) and (3) of PR 66/2024.

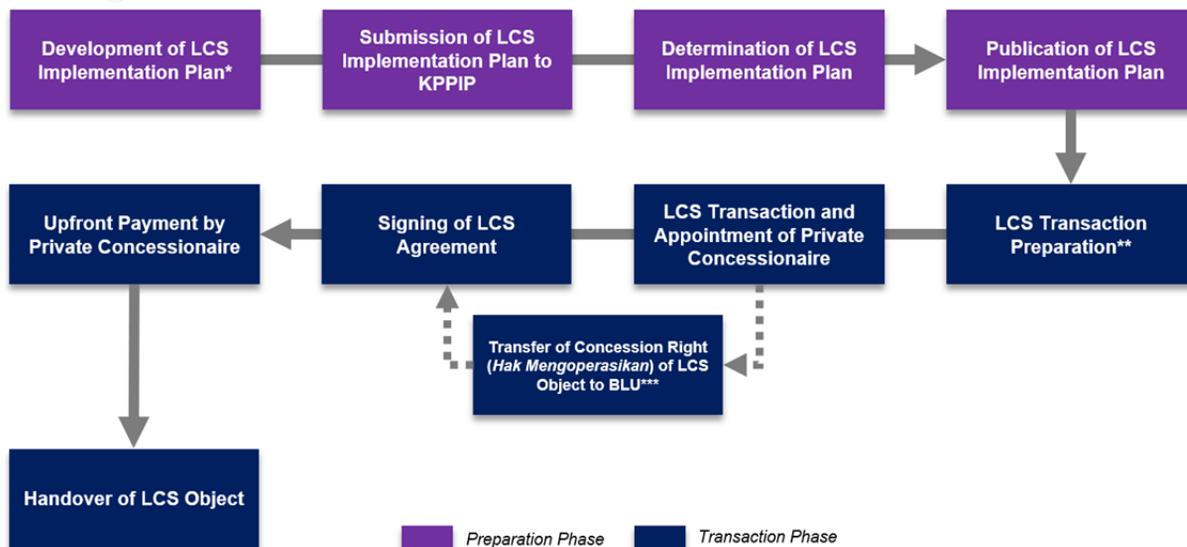
The object of LCS itself is limited to State Assets (*Barang Milik Negara* or “**BMN**”) or SOE Assets. Notwithstanding the generally applicable accounting practices, SOE Assets in the context of LCS refers to separated state assets (*kekayaan negara yang dipisahkan*), which are owned by and recorded in the financial statements of SOE for use in the operational and corporate purposes of SOE. The following is the updated criteria for the LCS Objects provided in PR 66/2024:

No	PR 66/2024	PR 32/2020
1	Fully or partially operational ⁶	Fully operational for at least 2 (two) years ⁷
2	Requires a partner to increase its commercial value and/or operational efficiency based on generally-accepted international standards ⁸	In need of operational efficiency based on generally-accepted international standards ⁹
3	Infrastructure assets have a useful life of at least 10 (ten) years. ¹⁰	
4	For BMN, the asset must be contained within the ministry/authority audited financial statement based on the previous government accounting standards. ¹¹	
5	For SOE Assets, the asset must be accounted contained in the audited financial statements of the previous 3 (three) accounting years based on Indonesian accounting standards. ¹²	For SOE Assets, the asset must record a positive cash flow in at least 2 (two) consecutive years and an audited financial statement of the previous 3 (three) accounting years based on Indonesian accounting standards. ¹³

However, exclusively for criteria numbers 3 and 5 above, PR 66/2024 provides that the criterion may be waived if the feasibility study procured by GCA demonstrates (i) financial feasibility; and (ii) additional value creation if optimized through LCS.¹⁴

2. LCS Preparation and Transaction Phase

a. General Timeline of LCS



*LCS Implementation Plan consist of: (i) name of LCS Object; (ii) estimation of upfront payment; and (iii) LCS generated revenue utilization plan

** LCS transaction preparation consist of at least: (i) preparation of technical document (including financial and legal technical study); (ii) market sounding; (iii) determination of upfront fee; (iv) determination of LCS generated revenue utilization; (v) private concessionaire selection preparation; (vi) preparation of LCS Agreement; and (viii) appointment of working group for private concessionaire selection process.

***exclusively if LCS object is BMN

⁶ Article 4 paragraph (1) point (a) of PR 66/2024.

⁷ Article 4 paragraph (1) point (a) of PR 32/2020.

⁸ Article 4 paragraph (1) point (b) of PR 66/2024.

⁹ Article 4 paragraph (1) point (b) of PR 32/2020.

¹⁰ Article 4 paragraph (1) point (c) of PR 66/2024 and Article 4 paragraph (1) point (c) of PR 32/2020.

¹¹ Article 4 paragraph (1) point (d) of PR 66/2024 and Article 4 paragraph (1) point (d) of PR 32/2020.

¹² Article 4 paragraph (1) point (e) of PR 66/2024.

¹³ Article 4 paragraph (1) point (e) of PR 32/2020.

¹⁴ Article 4 paragraph (2) of PR 32/2020.

b. Beauty Contest as the Main Transaction Mechanism

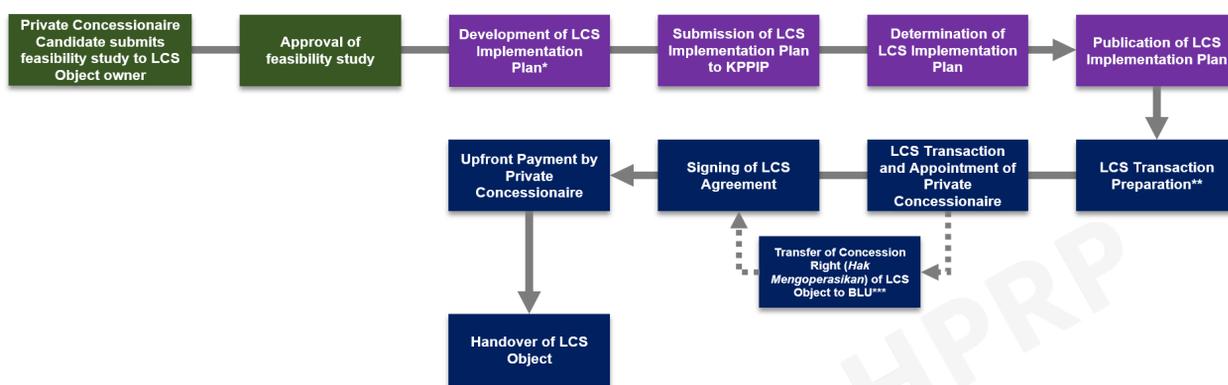
PR 66/2024 has amended the transaction mechanism for LCS from the tender through the prequalification process to a beauty contest, **with the exception that direct appointment may be used** if any of the following conditions is met:¹⁵

- i. expansion of the scope of work of a previous LCS managed by the same private entity;
- ii. extension of the agreement period of a previous LCS managed by the same private entity; or
- iii. a repetition of the beauty contest has failed.

Furthermore, beauty contests held by the Central Government will be further regulated by the National Public Procurement Agency (*Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah*) where, initially, the authority to further regulate tenders with prequalifications for LCS transaction phases under PR 20/2022 is bestowed upon the Coordinating Minister for the Economy acting as Head of KPPIP.¹⁶

c. Unsolicited LCS

PR 66/2024 has introduced unsolicited LCS, by which interested private parties may propose to the GCA to utilize its asset by submitting an unsolicited LCS interest which includes the required feasibility study. The general timeline of unsolicited LCS is as follows:



*LCS Implementation Plan consist of: (i) name of LCS Object; (ii) estimation of upfront payment; and (iii) LCS generated revenue utilization plan

** LCS transaction preparation consist of at least: (i) preparation of technical document (including financial and legal technical study); (ii) market sounding; (iii) determination of upfront fee; (iv) determination of LCS generated revenue utilization; (v) private concessionaire selection preparation; (vi) preparation of LCS Agreement; and (viii) appointment of working group for private concessionaire selection process.

***exclusively if LCS object is BMN

■ Unsolicited Phase ■ Preparation Phase ■ Transaction Phase

The proposed infrastructure to be utilized through unsolicited LCS must satisfy the following criteria:¹⁷

- a. unsolicited LCS must create additional value for the object of the LCS;
- b. in the event the scope of the proposed LCS includes a development or procurement of a new asset, it must be technically integrated with the sector's masterplan;
- c. it must be economically and financially feasible; and
- d. the proposing party must have the financial capacity to finance the implementation of the LCS.

3. Upfront Fee & Clawback and Utilization of Generated Income through LCS

As explained above, theoretically the aim of LCS is to procure funds to develop other infrastructure projects, and so the private concessionaire is mandated to pay the GCA an upfront fee equal to the estimated income generated through the LCS where the estimate is based upon:¹⁸

- a. for BMN, a valuation made by (i) a government appraiser; or (ii) public appraiser determined by the Minister of Finance, in accordance with prevailing regulations on BMN management; and
- b. for SOE Assets, a valuation made as determined by the director of the SOE as the GCA.

¹⁵ Article 16 paragraph (1), (2), (3), and (4) of PR 66/2024.

¹⁶ Article 16 paragraph (5) of PR 66/2024.

¹⁷ Article 10A of PR 66/2024.

¹⁸ Article 7A of PR 66/2024.

Beside the above upfront payment, PR 66/2024 provides that GCA may impose on the private concessionaire a clawback (*pembagian keuntungan*) from the infrastructure operated by the private party under the LCS scheme in accordance with prevailing laws and regulations.¹⁹ Although PR 66/2024 does not have further provisions on this matter, it is safe to assume that the option of imposing a clawback in a LCS project is to maintain the agreed upon income generated from the LCS object operated by the private concessionaire (equal to the upfront payment, i.e., equal to the agreed rate of return).

Furthermore, PR 32/2020 provides that the income generated by the GCA from LCS can only be used for:

- a. optimizing the operational function of another type of infrastructure similar to the object of the LCS; or
- b. in the case where there is no other similar type of infrastructure in the possession of the GCA, the income may be allocated for the provision of other infrastructure types/sectors,

where the above infrastructure **must be** an infrastructure project registered with the Priority Infrastructure Projects (*Proyek Infrastruktur Prioritas* or “**PIP**”) and/or National Strategic Projects (*Proyek Strategis Nasional* or “**PSN**”).²⁰

With the issuance of PR 66/2024, infrastructure to be optimized or developed with income generated by an LCS no longer has to be registered with the PIP and/or PSN but it is **prioritized**. Furthermore, PR 66/2024 also allows, **if the GCA is an SOE**, the use of the LCS income for **corporate actions, including settlement of corporate liabilities or infrastructure investment to increase the company’s value** in accordance with the designated LCS plan.²¹

4. Government Support for LCS Projects

PR 66/2024 has introduced the option for the government to provide government support (*dukungan pemerintah*) for LCS Projects. However, PR 66/2024 does not further describe the types of government support available to be given to projects but it delegates to the Minister of Finance the authority to further regulate such support.²²

5. Key Takeaways

PR 66/2024 provides a developed model of LCS as an infrastructure financing mechanism by:

- a. expanding the infrastructure sectors for which cooperation through LCS is possible, including easing of the criteria for the object;
- b. introducing a mechanism for unsolicited LCS in order to invite potential private concessionaires to initiate the LCS process;
- c. expanding the use of income generated through LCS (i) for infrastructure outside of PIP and/or PSN; and (ii) for SOE, to use the income to settle corporate liabilities or infrastructure investment to increase the company’s value; and
- d. introduction of government support for LCS projects, subject to further regulation from the Minister of Finance.

¹⁹ Article 7A of PR 66/2024.

²⁰ Article 8 of PR 32/2020.

²¹ Article 8 of PR 66/2024.

²² Article 35A of PR 66/2024.

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The article above was prepared by Dentons HPRP’s lawyers

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