

# LEGAL AND INSTITUTIONAL FRAMEWORK FOR PUBLIC – PRIVATE PARTNERSHIP IN VIETNAM

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# Introduction

- Vietnam has a strong demand for infrastructure development: appr. US\$ 300 billion for 2011-2020 period
- State budget's funding capacity is limited and insufficient for infrastructure development
- ODA resource is also limited
- ⇒ An arising need to attract private investment for infrastructure development
- ⇒ PPP is an innovative solution
- ⇒ Issue prompted: Improving Vietnam's legal and institutional framework for PPP

# 1. PPP in Vietnam: Current status

## 1.1. Current status of PPP in the infrastructure of Vietnam

**Table 1: Progress of PPP projects in Vietnam**

	1990-1999	2000-2009	2010-2014	<b>1990-2014</b>
<b>Projects reaching financial closure</b>	10	34	40	<b>84</b>
Total amount (in USD mil)	745	6,540	6,103	<b>13,388</b>
Average project size (in USD mil)	74.5	192.4	152.6	<b>159.4</b>

Source: <http://ppi.worldbank.org>

-New investment projects in form of BOT, BOO

-2 projects are canceled, delayed (**distress**): 1 telecommunication project (\$773m), 1 water and wastewater treatment project (\$154m)

# 1. Current status of PPP in Vietnam

## 1.1. Current status of PPP in the infrastructure of Vietnam

**Table 2: Structure of PPP projects by industry**

Industry	No. of projects	Total value (USD mil)	% projects	% value	Average value per project
<u>Power</u>	60	7.631	81.1%	60.4%	127.2
<u>Gas</u>	1	1.300	1.4%	10.3%	1300.0
<u>Road</u>	2	409	2.7%	3.2%	204.5
<u>Sea port</u>	5	1.007	6.8%	8.0%	201.4
<u>Telecommunication</u>	3	2.024	4.1%	16.0%	674.7
<u>Water and wastewater treatment</u>	3	273	4.1%	2.2%	91.0

Source: <http://ppi.worldbank.org>

# 1. Current status of PPP in Vietnam

## 1.2. Existing statutory system and policy framework of PPP

### *1.2.1. Legal documents on PPP in Vietnam*

#### ❖ **PPP-related documentation of the National Assembly**

-Resolution No. 10/2011/QH13 on the 2011-2015 socio-economic development plan

-Laws: Law on Bidding 2013, Law on Public Investment 2014, Law on Construction 2014, Law on Investment 2014, Law on Public Debt Management 2009

-Resolutions on specific investment projects, such as:  
Resolution on Long Thanh International Airport investment project.

# 1. Current status of PPP in Vietnam

## 1.2. Existing statutory system and policy framework of PPP

### 1.2.1. *Legal documents on PPP in Vietnam*

#### ❖ **PPP-related documentation of the Government**

- Decree No. 15/2015/ND-CP dated February 14, 2015 on investment in the public-private partnership form
- Decree No. 30/2015/ND-CP dated March 17, 2015 providing guidelines for some articles on investor selection of the Law on Bidding
- Decree No. 10/2013/ND-CP dated January 11, 2013 providing the management and use of road transport
- Decrees guiding the implementation of Law on Construction, Law on Investment, and Law on Public Investment: Decree No. 59/2015/ND-CP dated June 18, 2015, on construction project management; Decree No. 72/2012/ND-CP dated September 24, 2012 of the Government on management and common-use of technical infrastructure works; Decree No. 77/2015/ND-CP dated September 10, 2015 on annual and medium-term public investment plan, and so on.

# 1. Current status of PPP in Vietnam

## 1.2. Existing statutory system and policy framework of PPP

### 1.2.1. *Legal documents on PPP in Vietnam*

#### ❖ **PPP-related documentations of the Ministries, industries, and local authorities**

- Currently, there isn't any document providing direct regulations or guidance on PPP at ministerial, sectoral, and local level

- Documents providing regulations and guidance on the collection of fees and expenses in infrastructure sector

- Documents providing guidance on the management, operation, and use of infrastructure works

# 1. Current status of PPP in Vietnam

## 1.2. Existing statutory system and policy framework of PPP

### 1.2.2. *Existing policy framework on PPP*

#### ❖ **Policy on sectors with priority for promotion of PPP investment**

Promotion of PPP investment is prioritized without limitation in infrastructure and public service sectors: Projects on infrastructure construction, renovation, operation, and management, equipment supply, or provision of public services



# 1. Current status of PPP in Vietnam

## 1.2. Existing statutory system and policy framework of PPP

### 1.2.2. *Existing policy framework on PPP*

#### ❖ Policies on tax

- Investment preferences for sectors in which investment is especially encouraged: exemption of land royalty/land use tax; exemption or reduction of CIT (exempted for 4 years, reduced by 50% for 9 years; for traffic projects, tax rate of 10% is applied for 15 years); exemption of duty on import of raw materials; preference on VAT.
- Existing policies offer insignificant benefits to companies in PPP projects.

# 1. Current status of PPP in Vietnam

## 1.2. Existing statutory system and policy framework of PPP

### 1.2.2. *Existing policy framework on PPP*

#### ❖ **Policies on service fees and prices**

- Fees and service prices are collected in accordance with regulations of the Ministry of Finance and specialized ministries
- There is an open regulation that enable the investors to decide fee rate by themselves based on specific projects
- Price management institution is relatively open. In certain cases, the investors and competent authorities may be allowed to set prices to offset financial loss without direct support from the state

# 1. Current status of PPP in Vietnam

## 1.2. Existing statutory system and policy framework of PPP

### 1.2.2. *Existing policy framework on PPP*

#### ❖ Policies on guarantee

- Loan guarantee: for projects of which owner's capital accounts for over 20% of total investment capital. Joint venture projects: guarantee is only provided for no more than 80% of Vietnamese partner's contribution
- Foreign currency security
- Return guarantee is based on make up time when there is a change of 5-10% between actual and expected return
- Guarantee is provided for state enterprises to supply raw materials, sell and purchase project products and services if necessary

# 1. Current status of PPP in Vietnam

## 1.2. Existing statutory system and policy framework of PPP

### 1.2.2. *Existing policy framework on PPP*

#### ❖ **Other preferential and security policies**

- Security on the exercise of land use right
- Security on the provision of public services
- Security on property ownership

# 1. Current status of PPP in Vietnam

## 1.3. PPP-related stakeholders in Vietnam

### *1.3.1. Service users*

- They are real sources of cash flows for the projects/services and to maintain and repair the works subsequently
- They are involved in the discussion over their capabilities and willingness to pay for the services at appropriate prices
- They establish the requirements on quality and level of services to ensure service quality, accountability, and fast response

# 1. Current status of PPP in Vietnam

## 1.3. PPP-related stakeholders in Vietnam

### 1.3.2. State

- Develop a portfolio of projects as the basis to attract PPP
- MPI is the lead agency acting on behalf of the Government in matters related to PPP management. MPI and MOF control and coordinate the management of state funds in PPP projects. MOC, MOJ, State Bank, and other ministries and industries: manage in accordance with their respective functions and duties.
- The joint-ministerial task force on PPP: speed up, coordinate, supervise the progress, and promote the implementation of PPP pilot projects
- The National Steering Committee on PPP: conduct research and direct the development of appropriate PPP management system and model
- Local specialized agencies on PPP: Ho Chi Minh, etc.

# 1. Current status of PPP in Vietnam

## 1.3. PPP-related stakeholders in Vietnam

### 1.3.3. *Donors*

- They are providers of direct capital for PPP projects
- Very few private investors feel motivated to participate in PPP projects
- The participation of foreign investors in PPP projects is limited
- Private financing tools for PPP projects are un-diversified and ineffective

# 1. Current status of PPP in Vietnam

## 1.3. PPP-related stakeholders in Vietnam

### 1.3.4. *Donors*

- Preferred loans for PPP projects allow the Government to complete PPP model and support in training human resource on PPP
- Financing Project Development Fund (PDF): additional fund is provided for project preparation phase
- Coordination framework between Vietnam and donors: Decree No. 38/2013/ND-CP of April 23, 2013 on management and use of official development assistance (ODA) and concessional loans of donors and implementation guidance documents (Circular No. 01/2014/TT-BKHDT, Circular No. 218/2013/BTC, etc.)



# 1. Current status of PPP in Vietnam

## 1.3. PPP-related stakeholders in Vietnam

### *1.3.5. Human resource training and development organizations*

- Ministries, industries, and localities lack human resource for PPP management
- MPI is the lead agency in mobilizing capital with a focus on promoting the communication, training, and improvement of PPP-related human resources
- Universities, regular training facilities: PPP is initially introduced in the curriculum

## **2. Discussion over the legal and institutional framework on PPP in Vietnam**

### **2.1. Achievements in the innovation of legal and institutional framework on PPP**

- Official, uniform legal documents on management in PPP area
- Financial institution offering initial support to PPP projects, ensuring project feasibility and providing certain security for investors
- Areas that are permissible for PPP investment are expanding and attracting investors, especially foreign ones
- Participation of stakeholders in the development and improvement of the legal and institutional institutional framework on PPP

## **2. Discussion over the legal and institutional framework on PPP in Vietnam**

### **2.2. Limitations and weaknesses**

- Stability and validity of legal documents on PPP are not high
- Documents guiding the implementation of recently enacted decrees are in the progress
- There are limitations in financial institution of the projects and coordination among relevant parties (State, donors, and assisting organizations)
- Incentives and security offered by the State to the projects are un-diversified and fail to motivate private investors
- PPP capital mobilization institution is un-diversified
- Planning and forecast quality is poor

## **2. Discussion over the legal and institutional framework on PPP in Vietnam**

### **2.3. Causes**

- There is no law on PPP
- PPP management system at ministerial and local levels isn't effectively organized and operated
- There is still doubt about the feasibility of PPP in existing legal documents: PPP is “prioritized” while in many countries, it is “mandatory”
- PPP-related human resource is unqualified
- The agreement between a certain population group and state agencies on its guideline on socialization of investment through collecting payback fee

## **2. Discussion over the legal and institutional framework on PPP in Vietnam**

### **2.4. Discussion over innovating the legal and institutional framework on PPP in Vietnam**

- Further improve the legal framework on PPP, including the necessity of developing a Law on PPP to protect investors' rights, as well as planning and preparing a portfolio of PPP projects
- Balance interests among the population, investors, and State in PPP projects: price and fee policies; division of risks; assurance for investors; and dispute settlement
- Improve the institution on mobilizing and utilizing financial resources for PPP projects: institution for mobilizing finance from state sector, capital market, and foreign investors
- Streamline the system of state management agencies specializing in PPP

## **3. Directions in innovating the legal and institutional framework on PPP in Vietnam**

### **3.1. Directions in innovating the legal framework on PPP**

- Submit a Law on PPP for enactment
- Research, draft, and enact documents on PPP project planning
- Promulgate circulars to provide guidance on proposal documents, bidding documents, contractual forms, financial targets of a project, and the compliance with international practices
- Revise the policies on prices and fees, as well as policies on generating income from projects to attract private investors
- Select a number of projects for pilot implementation in compliance with international practices
- Research and issue regulations on security policies for the investors, such as: minimum return guarantee, exchange rate risk guarantee, foreign exchange guarantee, etc.

### **3. Directions in innovating the legal and institutional framework on PPP in Vietnam**

#### **3.2. Directions in innovating the institution on capital sources for PPP projects**

- Improve the institution for mobilizing and utilizing state capital: setup VGF fund; manage and utiliz state budget capital effectively
- Develop and utilize new capital mobilization tools in PPP projects: PDF fund, private infrastructure investment fund, capital market financing tools, local development fund, etc.

### **3. Directions in innovating the legal and institutional framework on PPP in Vietnam**

#### **3.3. Directions in streamlining state management system and human resource for PPP projects**

- Streamline the lead agency in managing PPP investment at ministerial, industrial, and local levels; establish the institution on the operation and clear functions and roles
- Strengthen the role of PPP Steering Committee in developing and improving the legal and institutional framework on PPP
- Strengthen international cooperation in organizing domestic and foreign training courses as well as retraining activities



# Summary

- ❖ Enhancement of the legal and institutional framework for PPP is key in attracting private investment in Vietnam
- ❖ Steps to take for PPP legal & institutional framework enhancement:
  - Improve PPP-related regulations' effectiveness
  - Strengthen the funding mechanism for PPP projects
  - Consolidate the state administration of PPP

Thank you for your attention.