

# Thailand

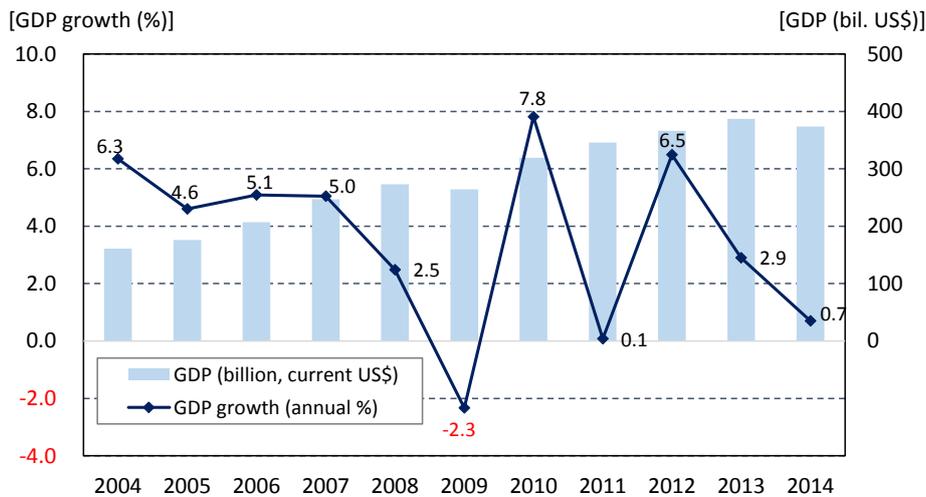
## 1. Overview

Thailand has a population of more than 66 million, and a total area of 513,120 km<sup>2</sup>. With a well-developed infrastructure, a free-enterprise economy, generally pro-investment policies, and strong export industries, Thailand enjoyed solid growth from 2000 to 2007 – averaging more than 4 percent per year – as it recovered from the Asian financial crisis of 1997–1998. The global economic downturn in 2008, however, cut Thailand's exports severely, which in turn caused economic growth to fall to 2.5 percent in 2008 and –2.3 percent in 2009 (Figure 4). Economic growth in 2011 was low due mainly to severe floods. In 2014 there was political confusion caused by a military coup, however influence on the market was limited and a recession was avoided. The international credit rating agency, Standard & Poor's, maintained Thailand's existing credit rating for 2014 at BBB+ (long-term foreign currency) with a stable outlook. In an effort to maintain strong growth, the government intends to expedite major investments in both ongoing and new projects in order to raise the quality of life and increase national competitiveness. This strategy will require national fiscal discipline, transparency, and accountability.

In Thailand, PPP is a term that has historically been used in a broad sense to cover concession-based private investment in public infrastructure, made on the basis of traditional project finance structure. These traditional forms of project financing have played a major role in many sectors of the Thai economy for more than a decade, most notably in the energy, telecommunications, and transport sectors. According to the Global Competitiveness Report 2014–2015, Thailand's infrastructure is ranked 48th out of 144 countries indicating that infrastructure is developing, but that there remains room for improvement.

## PPP Country Profile – Thailand

Figure 4: Thailand Economy



Source: International Monetary Fund, World Economic Outlook Database.

<https://www.imf.org/external/pubs/ft/weo/2015/01/weodata/index.aspx> (accessed 20 June 2015)

## 2. Institutional and Regulatory Frameworks

The first PPP law enacted by the Thai government to guide public–private participation and investment was the Public Participation in State Undertaking Act B.E. 2535 (1992) also known as the PPSU Act. This act was brought in to regulate PPP activities utilizing public assets in projects exceeding B1 billion (approximately US\$33.3 million) in value. However, since the main purpose of this PPSU Act was to prevent government corruption in granting rights to private investors for operation or use of state properties, rather than to provide an enabling environment for PPP projects, only certain types of PPP project involving state properties (for example, build–operate–transfer (BOT) and build–transfer–operate (BTO) schemes) are covered by the Act. Several other types of scheme such as build–own–operate (BOO) and management contracts are not covered.

The new PPP Act, the Private Investments in State Undertakings Act B.E. 2556 (2013), took effect on 4 April 2013 to replace the old PPSU Act. The new act aims to streamline the project approval process through the PPP Policy Committee, chaired by the Prime Minister with the Minister of Finance acting as Vice Chairperson. The State Enterprise Policy Office (SEPO) is to act as the PPP secretariat office. The SEPO is responsible for preparing a draft national PPP strategic plan for approval by the PPP Policy Committee and the Cabinet respectively. The PPP strategic plan must be set out as a 5-year investment and policy plan,

## PPP Country Profile – Thailand

including priority sectors and pilot projects, as well as investment budgets. For the time being, the PPP Act still covers investment projects exceeding B1 billion. However, the PPP Policy Committee is given authority to consider broadening the act to cover projects which have values under this threshold (See section on ‘Recent Developments in PPP’ below). For a project exceeding B1 billion, an external consultant who is in the SEPO’s list of qualified consultants must conduct a feasibility study. The feasibility study is to be submitted to the responsible ministry, the SEPO, and the PPP Policy Committee for approval respectively. If the project requires government’s budget, agency’s budget, or debt guaranteed by the Ministry of Finance, after the Committee approves such a project, the feasibility study must be submitted to the Cabinet for final approval.

In Thailand, a long-term concession agreement between the relevant government authority and an investor is seen as a common feature of almost all project financing. The type of structure used depends on the nature of the project being implemented and the relevant government authority. The most common structures for project financing are:

- Build–Own–Operate (BOO)
- Build–Transfer–Operate (BTO)
- Build–Operate–Transfer (BOT)

The government usually finances all civil works either through the fiscal budget or through borrowing from multilateral institutions. Other kinds of government contribution, for example, equity, are also allowed under each project agency’s establishment act. However, the Thai government cannot provide any guarantee for funding to the private sector. Its funding guarantees are only provided for government agencies and state-owned enterprises.

Thai citizens are allowed to own immovable assets, while foreigners can obtain ownership for land and buildings under conditions specified in the Land Law, the Private, Commonly-owned Housing Act, the Investment Promotion Act, and the Industrial Estate Authority of Thailand Act. In the case of PPP projects, the ownership of assets depends on the particular project agency’s establishment act. For example, the Mass Rapid Transit Authority (MRTA) Act specifies that the ownership of assets will be transferred to the MRTA once construction is completed. Ownership of land and buildings therefore adheres to government policies. The government is allowed to acquire land or immovable assets for public utilities, or in the public interest, according to the Expropriation of Immovable Property Act B.E. 2530 (1987). However, the objectives of land use and the boundary of the required lands of each

## PPP Country Profile – Thailand

project must be specified and issued in a royal decree. A compensation committee will then be appointed to set the property value and amount of compensation.

### 3. Key Features of the PPP Act

The 2013 PPP Act provides a fundamental change in the project identification and approval process by introducing clear systematic guidelines for the implementation of PPP projects.

The act contains the following key provisions:

- A PPP Policy Committee, chaired by the prime minister, is appointed to set up a 5-year strategic plan and to approve the PPP project.
- The PPP strategic plan must be set out as a 5-year investment and policy plan, identifying priority sectors and pilot projects. The target contribution from each financial source such as national budget or private funds must also be defined in order to ensure accountability and fiscal discipline.
- The State Enterprise Policy Office (SEPO) is to act as a secretariat office for the above committee as a central PPP unit. The key roles of this unit are to prepare PPP strategic plans, provide recommendations on project feasibility, and provide a database of, and information about, PPP schemes.
- The host agency must hire external consultants to conduct a feasibility study. A feasibility study must at least cover project costs, comparison of costs and values among national or agency budgets and PPP, PPP types, project impacts, risk identification and risk management. The proposal, including a feasibility study, must then be submitted to the responsible ministry, the SEPO, and the PPP policy committee for approval respectively.
- The procedure of consideration will be shortened, and the time period for the relevant government organizations to fulfil their duties will be set within a reasonable time. The entire process for a PPP project approval is expected to be shortened to approximately 7 to 12 months instead of 2 years previously. It is now possible, for example, for the project development phase to be started without consulting the Cabinet.
- After the project is approved by the PPP policy committee, the host agency must set up a selection committee consisting of a representative of the host agency as

## PPP Country Profile – Thailand

chairperson, and members from the Bureau of the Budget, the SEPO, the Office of the Attorney General, or a maximum of four qualified persons. The role of the committee is to approve terms of reference and a draft contract, and to select the desired private entity. The selection result must be submitted to the responsible minister for comment and then submitted to the cabinet for approval.

- A PPP procurement procedure and a standard PPP contract will be also developed by the SEPO to standardize and facilitate negotiations, and to strengthen project management. Contract management matters, such as criteria and standard clauses to amend or renew an agreement between the public and private sectors will be provided.
- The MOF is to establish a Private Investment Promotion Fund to provide ‘seed money’ for new investment projects. This fund will be used to support the preparation of a PPP strategic plan and to support state agencies in making project proposals and conducting feasibility studies. This fund is to be managed by a committee chaired by the Permanent Secretary of the Ministry of Finance.
- The host agency will rank PPP alternatives and justify non-PPP options by comparing the value for money among alternatives.

### 4. Recent Developments in PPP

The PPP Policy Committee has been appointed and is currently chaired by Deputy Prime Minister Pridiyathorn Devakula. It is reported that this Committee had a meeting on 11 February 2015 and agreed that relevant organic laws and regulations need to be issued soon.<sup>52</sup> The organic laws include governing the calculation of the project value, the method to evaluate the projects, procedures to invite firms into joint ventures, the screening process, contract standards, and joint investment by private firms in projects worth less than B1 billion. Meanwhile, the new regulations allow the ministries responsible to approve projects worth less than B1 billion. Only projects worth more than B5 billion are required to be voted by the PPP Policy Committee. For projects valued from B1 billion to B5 billion, only those involving

---

<sup>52</sup> Bangkok Post (2015), ‘State Mulls Raising PPP Value Plan Awaiting Organic Laws, Regulations’, 12 February.

## PPP Country Profile – Thailand

infrastructure and public services must go through the committee, while the other projects are approved by the relevant ministries.

The PPP strategic plan is also considered to be under a finalizing process by the PPP Committee through public hearing, and approval by the Cabinet.<sup>53</sup> The areas open to the private sector in the plan will cover not only conventional economic infrastructure such as mass transit, sea ports, airports, water management, but also social infrastructure in the fields of education, public health, science, or technology.

An overall national development plan, an 8-year transportation infrastructure programme for 2015–2022, was approved by the Cabinet in October 2014. Total project cost in the programme is B3.3 trillion. The private sector is allowed and expected to play a large role in the programme through the new PPP scheme. Development projects to be implemented this year include digital economy, water management, and social infrastructure projects for education and public health.

---

<sup>53</sup> The Nation (2015), 'Transparency, Accelerated Process Key to PPP Plan: Sommai', 10 February.