

Viet Nam

1. Overview

The economy of Viet Nam has been growing steadily since 1988. Its GDP growth rate has been in the range of 5.0 percent to 9.5 percent per annum, despite various fluctuations in the international economy such as the 1997–1998 Asian financial crisis and the 2008–2009 global financial crisis. Currently, according to Fitch Ratings, Viet Nam's long-term foreign and local currency issuer default ratings (IDRs) are at 'BB-' and the country ceiling is at 'BB-' upgraded in November 2014 from the previous 'B+'. The short-term foreign-currency IDR is at 'B', showing no change compared to the rating at the beginning of 2013.

The government has a target to be an industrialized country by 2020. In order to achieve the target, various policies have been adopted and are under implementation. One of the most important policies relates to building necessary infrastructure to boost economic development. According to the Ministry of Planning and Investment (MPI), the estimated necessary capital for infrastructure construction in Viet Nam by 2020 is calculated as US\$400 billion, of which half is planned to be mobilized from the private sector.

The national policy of mobilizing private funds for infrastructure development can be seen in the Socio-Economic Development Strategy 2011–2020, adopted in the general assembly XI of the Party held in January 2011 (general assembly of the party is held every 5 years to decide the basic direction of the country). The Socio-Economic Development Strategy 2011–2020 stipulates clearly the recommendation of involvement by various economic organizations, including foreign investment, in infrastructure development.

After long discussions on PPP investment form, Viet Nam has been rushing to complete the new legal framework since 2014, to call private sector for public investment project by series of issuance of new and amended regulations. The government issued the new Decree 15 on PPP Investment Form on 14 February 2015 (Decree 15) and Decree 30 on PPP Investor Selection on 17 March 2015 (Decree 30). Relevant ministries are now drafting circulars related to the newly issued laws and decrees.

2. Institutional and Regulatory Frameworks

2.1 History

The history of PPP regulation began in 1992 when the definition of BOT firstly appeared in the revised Law on Foreign Investment 1992. The first Decree on BOT guidelines was promulgated in 1993. The Decree on BOT was revised three times in 1998, 2007, and 2009. In the meantime, in 2010, the government issued Decision 71 on the trial regulation on PPP Investment Form to promote more PPP projects for infrastructure construction. From the preparation of Decision 71, many issues on PPP have been discussed among ministries and now the National Assembly and the government is going to complete the new legal framework for the new era of infrastructure construction.

2.2 Institutional framework

Recent changes of the institutional framework are the following:

- 1) Amended the Law on Tendering in 2013, effective from 1 July 2014

Before the amendment, there were only two types of tendering for public procurement: tendering for goods and tendering for contractor for construction. The amended Law on Tendering in 2013 added a third type of tendering, which is tendering for the PPP investor. As a result, choosing a PPP investor is regarded as one of normal public procurement.

- 2) The new Law on Public Investment in 2014, effective from 1 January 2015

Before the issuance of the Law on Public Investment, public investment was implemented under many kinds of law and there was no comprehensive law to instruct public investment. The rule on public investment is made clearer by the issuance of the Law on Public Investment.

- 3) The amended Law on Construction in 2014, effective from 1 January 2015

PPP Country Profile – Viet Nam

Some concepts of the Law on Construction were amended to harmonize with the new Law on Public Investment.

4) The amended Law on Investment in 2014, effective from 1 July 2015

Before the Law on Public Investment, the Law on Investment was the principal law for PPP projects, including BOT. Some concepts of the Law on Investment were amended to harmonize with the new Law on Public Investment.

5) Decree 15 on PPP Investment Form dated 14 February 2015

Decree 15 is the principal regulation on implementation of PPP investment form, which is the most important regulation for PPP.

6) Decree 30 on PPP Investor Selection dated 17 March 2015

Decree 30 is issued under the amended Law on Tendering to provide guidance on tendering of PPP investor selection.

7) Relevant circulars are going to be issued in 2015 and 2016, namely:

- a. Circular on Project Development Fund
- b. Circular on Preparation and Appraisal of Feasibility Study
- c. Circular on PPP Contracts
- d. Circular on forms of submission documents and official documents related to PPP
- e. Circular on Viability Gap Fund
- f. Circulars on guidelines of each sector by each ministry

The new legal framework shows the commitment of the government to focus on infrastructure construction and their will to mobilize private funds for infrastructure construction.

2.3 Steps of PPP project formulation and implementation

Decree 15 defines the steps of PPP project formulation and implementation as the following:

PPP Country Profile – Viet Nam

- 1) The project is consistent with the approved master plan
- 2) Project proposal: Preparation – Evaluation – Approval
- 3) Announce in public the list of PPP projects calling for investors
- 4) Feasibility study report: Preparation – Evaluation – Approval
- 5) Preparation of bidding documents
- 6) Bidding
- 7) Contract negotiation
- 8) Issuance of investment registration certificate
- 9) Implementation of project
- 10) Supervision
- 11) Accounting finalization of investment capital within 6 months after completion of construction
- 12) Transfer of project facility according to contract

2.4 The concept of Decree 15

Coordinating agency

The Ministry of Planning and Investment (MPI) is the coordinating ministry for the execution of PPP projects and assists the government to uniformly administer investment activities in the PPP form on a nationwide basis. The MPI is expected to advise investors preparing a PPP project.

The government has established the State Steering Committee for PPP, to assist the authorized state body to formulate and commence projects. Decision No. 1624/QĐ-TTg of the prime minister dated 29 October 2012, assigns Vice Prime Minister Hoang Trung Hai to chair the committee. Deputy chairpersons are the Minister of Planning and Investment and the Deputy Minister of Finance. The group also includes representatives of the Government Office, the State Bank of Viet Nam, the Ministry of Justice, the Ministry of Industry and Trade, the Ministry of Transport, the Ministry of Construction, and other relevant bodies.

Decree 15 affirms that the State Steering Committee for PPP has the role of managing PPP projects. Decree 15 also requests each ministry and the provincial-level People's Committee

PPP Country Profile – Viet Nam

to assign an internal agency to act as coordinator to manage PPP activities or establish a new unit specialized for PPP project coordination. Currently, the Ministry of Transportation established the Management Board of PPP Project Investment; the board is active in managing BOT transportation infrastructure projects. This board could be a model unit to manage PPP projects as most ministries and the People's Committee have not managed PPP projects well in the past.

Sectors for PPP investment form

The sectors include the following:

1. Transportation and logistics infrastructure facilities and related services
2. Lighting systems, water supply systems, water discharge systems, water collection systems, wastewater treatment, solid waste treatment, social housing, resettlement housing, cemeteries
3. Power plants, power transmission lines
4. Infrastructure facilities for healthcare, education, training, vocational training, culture, sport and related services, office building of state agencies
5. Infrastructure facilities for trade, science and technology, hydrometeorology, economic zones, industrial zones, high-tech zones and ICT zones, IT applications
6. Infrastructure facilities for agriculture, rural areas and services for agricultural products processing and consumption
7. Other sectors as decided by the prime minister

Type of PPP investment form

Decree 15 defines seven types of PPP investment: build–operate–transfer (BOT), build–transfer–operate (BTO), build–transfer (BT), build–own–operate (BOO), build–transfer–lease (BTL), build–lease–transfer (BLT), and operate & manage (O&M). BOO, BTL, BLT, and O&M are newly defined by Decree 15.

Minimum equity capital raised by investor

PPP Country Profile – Viet Nam

Decree 15 provides minimum equity capital ratio to total investment capital, which is not lower than 15 percent for total investment capital up to VND1,500 billion (approximately US\$69 million) and is not lower than 10 percent for the portion on total investment capital above VND1,500 billion. This total investment capital includes the capital contributed by investor only and doesn't include the capital contributed by the state.

State capital participation

There is no universal limited percentage of the state capital portion to the investment capital. The state capital portion will be decided project-by-project based on project proposal and feasibility study.

Project Development Facility

There is a concept of Project Development Facility (PDF). ADB and the French Development Agency (AFD) have provided about US\$30 million for PDF to the government. The circular on the use of PDF is expected to be issued in 2015. The investor shall reimburse the cost incurred for project formulation by the authority to the PDF.

Government guarantee

A government guarantee, such as minimum revenue guarantee, foreign currency conversion guarantee, or a certain level of foreign exchange rate guarantee, may be provided based on the results of the feasibility study and negotiation between the investor and the authority. So far, there is no written rule about what conditions are eligible for applying a government guarantee.

Unsolicited proposal

An unsolicited proposal is accepted with 5 percent cost advantage in bidding. If a proposing investor failed in the bidding, the proposing investor can claim the cost, including the feasibility study, from the winner of the bidding, subject to agreement with the authority in advance. Unsolicited proposals will not be contributed state capital but can be contributed capital from ODA and concessional loans by foreign donors if the project is within the category eligible to use such capital by foreign donors.

PPP Country Profile – Viet Nam

Land matters

Land is public property. The state will allocate or lease land to individuals or organizations. Holding a Certificate of Land Use Right (CLUR) is the evidence of registration of the land use right. Ownership of houses and other assets attached to land such as construction works is acknowledged in the CLUR and the owner registers its ownership of assets in accordance with the provisions of the Law on Land 2013 and other relevant laws. The provincial-level People's Committee issues the CLUR. Foreign invested organizations established under the laws of Viet Nam are entitled to be issued a CLUR. Foreign organizations established under foreign laws are not given a CLUR.

The provincial People's Committee is responsible for site clearance and for completing procedures for allocation or lease of land to implement the project in accordance with the Law on Land, the project contract, and related contracts. As part of the investment incentives granted by the government, the investors are exempt from, or are entitled to, a reduction of land use fees with respect to that area of land allocated by the state, or are exempt from, or entitled to, a reduction of land rent for the duration of project implementation consistent with the Law on Land.

Mortgage of assets and step-in right

The investors are permitted to mortgage assets, land use rights, and the right to commercially operate the project facility with the lender. Step-in right is secured for lenders.

Foreign law applicability

The governing law can be the foreign law if one of the signing parties is a foreign investor.

Tax incentives

Tax incentives are given to certain infrastructure projects such as water treatment plants, power, bridges, roads, railways, airports, seaports, river ports, and terminals at the rate of 10 percent corporate income tax for 15 years with 4 years exemption, and for 9 years at 50 percent reduction although the standard corporate income tax rate is 22 percent until the end of 2015 and 20 percent onward.

PPP Country Profile – Viet Nam

PPP investor selection under Decree 30

International tendering will apply to the selection of investors for PPP projects except the following:

- 1) Investment sector of the project is restricted for foreign investors under the laws of Viet Nam and international treaties that Viet Nam takes part in;
- 2) There are no foreign investors that pass international pre-qualification; and
- 3) The project is categorized in Group C projects under the Law on Public Investment. Group C projects include the total investment capital of less than VND120 billion for sectors such as airport, railroad, national highway, power, oil, gas, chemical, and mining; less than VND80 billion for sectors such as irrigation, water supply, drainage, communication, and pharmaceutical; less than VND60 billion for sectors such as agriculture, forestry aquaculture, and national parks; VND45 billion for sectors such as health care, culture, education, scientific research, broadcasting, tourism, and so on. If the project needs progressive technology or international managerial experience, the local tenderer will have to partner with a foreign tenderer or use the foreign partner as a foreign contractor.

Decree 30 provides the following direct appointment conditions:

- 1) Only one investor registers and satisfies the requirements set out in the pre-qualification invitation documents, or only one investor passes the pre-qualification.
- 2) Only one investor has the capacity to implement the project in regards to intellectual property, commercial secrets, technology, or arranging capital funding.
- 3) As for an unsolicited proposal, the project satisfies the requirements for project implementation with the highest feasibility and efficiency. The prime minister will decide on the highest project feasibility and efficiency on satisfaction under the following conditions:
 - a. There is an approved feasibility study report.
 - b. The proposed service price, state contributed capital, social benefits, and state benefits are reasonable.

PPP Country Profile – Viet Nam

- c. The requirements for protection of national sovereignty, national borders, or islands have been satisfied.

3. Recent Developments in PPP

According to the Ministry of Transportation (MOT), there are 68 BOT projects formulated under the management of MOT in the sectors of road, highway, airport, canal, or railway with fund mobilization of about US\$8 billion from the private sector, out of which most of the projects were procured after 2012. For example, 16 projects in Road No 1 expansion and Road No 14 expansion were formulated in 2013. 4 BOT highway projects are under construction. 2 BOT airports have just been procured in early 2015. Most lenders in these projects are local banks. The MOT is currently studying 62 new BOT projects (36 for road, 10 for highway, 6 for airport, 5 for canal, 4 for railway, and 1 for sea line). It is expected that more BOT projects will be developed and mobilize private funds into public projects.

Foreign investors are seeking investment opportunities in the power, water supply, wastewater treatment, and airport sectors. As for BOT power projects, the Mong Duong 2 project reached financial closure in 2011 as the third foreign BOT power project after the first BOT project, Phu My 2.2 and the second BOT project, Phu My 3 in 2001. Other BOT power projects with Japan, Thailand, and Malaysia are in the negotiation stage. There are 20 BOT power projects, three of which are under operation, two are signed, and others under negotiation.