

Regulatory Framework/Institutional Arrangements for PPPs - Thailand

Full Description

Context of regulatory and institutional framework governing PPPs:

- [Does the regulatory framework in your country allow procuring PPPs?](#)
- [Are you aware of any reforms related to PPPs that: Took place in or after 2017, but before June 1, 2019?](#)
- [Ongoing and/or are planned reforms to be adopted after June 1, 2019?](#)
- [For which of the following sectors is the above-mentioned regulatory framework applicable?](#)
- [Does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors, besides national defense and other matters of national security?](#)
- [PPP procuring authorities and their website\(s\)](#)
- [In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program \(PPP Unit\)?](#)

Questions:

Does the regulatory framework in your country allow procuring PPPs? Yes

Legal Basis: *PPP in Thailand is regulated by the Public-Private Partnerships Promotion Act B.E. 2562 (2019) ("PPP Act"). The PPP Act came into effect on 11 March 2019. The new PPP Act replaces the existing PPP law (i.e. the PISU Act) in its entirety. The PPP Act applies to a project that: (i) involves a "Thai public entity"; (ii) deals with or involves an undertaking which a Thai public entity is authorized by law to perform; and (iii) has the nature of "joint investment", ("Joint Investment Project"). However, the regulations and notifications previously issued under the light of the PISU Act are still in effect until the new regulations and notifications will be enacted. Thus, the main regulations and notifications for PPP in Thailand are, in particular: (i) the Notification of the Public-Private Partnership in State Undertaking Policy Committee Re: Required Details in a Project Agency's Project Appraisal Report B.E. 2557 (2014) ("Project Appraisal Notification"); (ii) the Notification of the Office of State Enterprise Policy Committee Re: Details of invitation notice, document of proposal for investment participation, method for announcing the invitation, selection methods of the selection committee prescription of bidding security and performance security, B.E. 2558 (2015) ("Details of Invitation Notification"); (iii) the Notification of the Public-Private Partnership in State Undertaking Policy Committee Re: Strategic Plan for Public-Private Partnership in State Undertaking B.E. 2560-2564 (2017-2021) ("Strategic Plan for PPPs"); (iv) the Announcement of the Office of State Enterprise Policy Committee Re: Standard Provisions of an Investment Partnership Contract B.E. 2558 (2015) ("Standard Provisions"); and (v) the Announcement of the Public-Private Partnership in State Undertaking Policy Committee Re: Characteristics of Amendment to Investment Partnership Contract in Material Content B.E. 2558 (2015) ("Amendment to Contract Announcement"). The aforementioned regulations shall constitute the basis of the analysis that follows.*

Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in or after 2017, but before June 1, 2019? Yes

Description: *Replacement of the PISU Act with the PPP Act.*

Are ongoing and/or are planned to be adopted after June 1, 2019? Yes

Description: *Under the PPP Act, the relevant authorities (e.g. the State Enterprise Policy Office) must issue the notifications and regulations required for the implementation of the PPP Act within 180 from the effective date of the PPP Act (i.e. 7 September 2019).*

For which of the following sectors is the above-mentioned regulatory framework applicable?

• **Transport: Yes**

- Legal Basis: *Under Section 7 of the PPP Act, the PPP project that is subject to the PPP Act must involve with the following infrastructure and public services: (1) road, highways, motorways and land transport; (2) train, electric train and rail transport; (3) airport and air transport; (4) port and water transport;*

• **Water: Yes**

- Legal Basis: *Under Section 7 of the PPP Act, the PPP project that is subject to the PPP Act must involve with the following infrastructure and public services: (5) water management, irrigation, waterworks and wastewater treatment;*

• **Energy: Yes**

- Legal Basis: *Under Section 7 of the PPP Act, the PPP project that is subject to the PPP Act must involve with the following infrastructure and public services: (6) energy;*

• **ICT: Yes**

- Legal Basis: *Under Section 7 of the PPP Act, the PPP project that is subject to the PPP Act must involve with the following infrastructure and public services: (7) telecommunications and communications;*

• **Social infrastructure: Yes**

- Legal Basis: *Under Section 7 of the PPP Act, the PPP project that is subject to the PPP Act must involve with the following infrastructure and public services: (8) hospital and public health; (9) school and education; (10) housing and facilities for low and medium income earners, elders, underprivileged or disable person; (11) exhibition center and conference center; and*

• **Other: Yes**

- Legal Basis: *Under Section 7 of the PPP Act, the PPP project that is subject to the PPP Act must involve with the following infrastructure and public services: (12) other activities to be announced by a Royal Decree.*

Does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors, besides national defense and other matters of national security?

- **Transport: No**
- **Water: No**
- **Energy: No**

- **ICT:** *No*
- **Social infrastructure:** *No*
- **Other:** *No*

The PPP procuring authorities and their website(s)

- **Name and Website:** *According to Section 4 of the PPP Act, "State Agency" means government agency, state enterprise, local administrative organization and other state agencies. Therefore, the PPP procuring authorities can be any government agency, state enterprise, local administrative organization and other state agencies. Given the case study assumptions, the Department of Highways (<http://www.doh.go.th/>) would most likely constitute the procuring authority.*

In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)? *Yes*

- **Name and Website:** *According to Section 4 of the PPP Act, "State Agency" means government agency, state enterprise, local administrative organization and other state agencies. Therefore, the PPP procuring authorities can be any government agency, state enterprise, local administrative organization and other state agencies. Given the case study assumptions, the Department of Highways (<http://www.doh.go.th/>) would most likely constitute the procuring authority.*
- **Year:** *2002*
- **Legal Basis:** *In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?*
- **Reorganization of Ministry, Sub-Ministry, and Department Act, B.E. 2545 (2002) under Section 11 states:** *Section 11. The Ministry of Finance shall have the following affiliated government agencies: (8) State Enterprise Policy Office*

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What are the main responsibilities of the PPP Unit?

- **Legal Basis:** *The main responsibilities of SEPO are set out in Sections 12 and 21 of the PPP Act; SEPO has to prepare the arrangement plan for the Joint Investment Project which is to be consistent with the master plan on the development of infrastructure and social aspects of the country prepared by the Office of the National Economic and Social Development Council. Section 12. The Office shall prepare partnership project preparation plans in a manner consistent with the national masterplan for the development of infrastructure and for social affairs as prepared by the Office of the National Economic and Social Development Council and submit the same to the Commission for consideration and approval. Section 21.*

The Office shall be responsible for clerical work of the Commission and shall have the duties and powers as follows: (1) to prepare and submit to the Commission partnership project preparation plans for consideration and approval; (2) to propose to the Commission the designation of State agencies as project handling agencies; (3) to develop necessary databases and bodies of knowledge and provide dissemination, training, education and advice in connection with public-private partnership; (4) to give opinions or advice to, or lay down practices for, agencies in connection with the execution of this Act; (5) to report problems and obstacles in regard to the execution of this Act to the Commission; (6)

to perform other activities under this Act or as entrusted by the Council of Ministers or the Commission.

- PPP regulation and policy guidance: *Yes*
- PPP capacity building for other public authorities: *Yes*
- PPP promotion among the public and/or private sectors in national and international forums: *Yes*
- Technical support in implementing PPP projects: *Yes*
- Identification and selection of PPP projects from the pipeline: *No*
- Revision of fiscal risks born by the Government: *No*
- Consultation with affected communities on potential impact of PPP projects: *No*
- Approval of PPP projects: *Yes*
- Undertaking the procurement of PPPs: *Yes*
- Oversight of PPP implementation: *No*
- Post-project appraisal and audit: *No*
- Other: *No*

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Is there a central project development fund (support mechanism) for project preparation?

- Name and website: *Public-Private Partnership Promotion Fund*
- Year: *2019*
- Legal Basis: *The Fund is regulated under PART VI of the PPP Act: PUBLIC-PRIVATE PARTNERSHIP PROMOTION FUND Section 51. There shall be established in the Ministry of Finance a fund called the “Public-Private Partnership Promotion Fund” for the purpose of supporting the execution of this Act. Section 53. Money of the Fund shall be expended to the extent necessary in the following cases: (1) the employment of advisers as provided in this Act; (2) the development of databases and bodies of knowledge as well as the dissemination, training, education and provision of advice in connection with public-private partnership; (3) costs of the management of the Fund.*

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