

PPP LEGAL FRAMEWORK SNAPSHOT - VIETNAM

GENERAL INFORMATION

Capital: Hanoi

Population: 90.73 million

GDP: USD 186,205 million

LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law and other applicable texts

Decree on Public-Private Partnership Investment Form (Decree 15/2015)
 Decree providing Detailed Regulations for the Implementation of A Number of Articles of the Law on Public Procurement on Selection of Investors (Decree 30/2015)
 Law on Public Investment, 2014
 Law on Public Procurement, 2013

Other applicable sectoral laws

Law on Construction, 2014
 Law on Management of Public Debt, 2009

PPP Unit

PPP Office – Public Procurement Management Agency (under the Ministry of Planning and Investment)

Definition

(Decree 15/2015, art.3)

Public-private partnership investment form means an investment form to be implemented based on a contract between an authorized state agency and (an) investor(s) and the project enterprise to implement, manage, operate an infrastructure project and to provide public services. (Decree 15/2015, art.3)

General Principles

(Decree 30/2015, art.87(8))

- Tendering should be based on competition, fairness, transparency and economic effectiveness. (Decree 30/2015, art.87(8))

Tendering and contracting process / Choice of the private partner

(Decree 30/2015 art.9)

- International open bidding must be applied for the selection of investor for PPP projects, except for the cases as below:
- Domestic open bidding shall be applied where participation of foreign investors are fully or partially restricted, or no foreign investors participate/fail to pass in international pre-qualification, or preliminary estimated total costs for project (excluding site clearance and compensation) is below VND 120 billion for the investment projects using land; and
- Direct appointment will be applied where only one investor registers and satisfies or passes the pre-qualification or, only one investor is capable to implement the project, or unsolicited projects satisfy the requirement of implementation in the most feasible and efficient ways that considered and determined by the Prime Minister. (Decree 30/2015 art.9)

Project Evaluation

(Decree 15/2015)

- Project proposals usually are formulated by the Ministries and provincial-level People's Committees to be the basis for investor selection. (art.16)
- These proposals are appraised and approved by different levels of authorities based on their economic scale as well as levels of national importance. (art.17)
- Feasibility studies provided by investors are appraised by the State Appraisal Committee (for those of national importance) and the focal unit assigned by the Ministers, Heads of ministerial-equivalent bodies and Chairmen of provincial-level People's Committees. (art.26)

Rights and Obligations of the public partner

(Decree 15/2015)

- The Prime Minister shall approve the feasibility study for projects of national importance while others are approved by the Ministers, Heads of the ministerial-equivalent bodies and Chairmen of the provincial-level People's Committees according to their respective levels of authority. (art.27)
- Obligation of the provincial-level People's Committee, coordinated with the authorized state agency, to organize land clearance and complete procedures for land allocation or lease of land to implement the project. (art.45)
- Right to supervise the investor's compliance with their obligations of the investor and employ third party for support if necessary. (art.47)
- Obligation of the authorized state agency to support the investor/project enterprise for collecting user fees. (art.51)
- Obligation of the agency appointed by the Prime Minister acting on behalf of the government to provide a guarantee for provision of raw materials, sales of products, services and other contractual obligations to the investor/project enterprise, as well as guarantee for obligations of state-owned enterprises selling fuel, raw materials, purchasing products and services of the investor/project enterprise. (art.57)
- Obligation to ensure the land use purpose of the project remain unchanged in the entire implementation term of the project contract. (art.59)
- Obligation to provide assurance of foreign currency balance. (art.60)
- Obligation to provide assurance of provision of public services. (art.61)
- Obligation to provide assurance of property right. Lawful properties of the investors shall not be nationalized or expropriated by administrative measures and in case of compulsory purchase or requisition for the purposes of national defense, public interests or other emergency situations, the investor shall be compensated accordingly. (art.62)

Rights and Obligations of the private partner

(Decree 15/2015)

- Obligation to contribute equity and mobilize other capital sources to implement the project, of which the equity ratio must meet certain thresholds according to different investment scales. (art.10)
- Lenders shall have step-in rights in the event that the investor or the project enterprise fails to fulfil the obligation under the agreements. (art.33)
- Right to assign part or all of its rights and obligations under project contract to the lender or another investor. (art.34)
- Obligation to provide security for performance of project contract, if required by and agreed with the authorized state agency. (art.38)
- Obligation of investor/project enterprise to issue regulations on selection of contractors to ensure fairness, transparency and economic efficiency. (art.44)
- Obligation of investor to ensure the quality of the project facility and services. (art.47)
- Right to be given favorable conditions to collect properly and in full the service fees. (art.51)
- Obligation to make public the financial statement and audit reports in compliance with the laws and agreements in project contract. (art.52)
- Right of investor/project enterprise to be entitled to incentives on corporate income tax, import duties, exemption from or reduction of land use fees etc. (art.55)
- Right of contractors participating in implementation of projects to be entitled to tax incentives. (art.56)
- Right of investor/project enterprise to be permitted to mortgage assets, land-use rights and the rights to commercially operate the project facility to the lenders.
- Right to terminate the project contract upon expiry of the agreed term or before the expiry term due to breach by one party without effective remedial measures, force majeure or other agreed circumstances. (art.36)

Obligations and Rights of Both Public and Private Partners

(Decree 15/2015)

Applicable Law

Dispute resolution

(Decree 15/2015)

- Law of Vietnam (art.63)
- Foreign Law. If one party of the project contracts is foreign investor or the Government guarantees the performance of obligations for such contracts, the signing parties may agree on the application of foreign law. (art.37)
- The dispute must firstly be settled through negotiation and conciliation before being referred to an arbitration institution or courts of Vietnam. (art.63(1)), except for:

- Dispute between the authorized state agency and a foreign investor or project enterprise established by a foreign investor could also be settled by an arbitral tribunal established on the basis of an agreement between parties. (art.63(2))
- Awards of foreign arbitrations shall be recognized and enforced in accordance with the laws on recognition and enforcement of foreign arbitral awards. (art.63(4))

EXAMPLES OF PROJECTS STRUCTURED AS PPP

**Infrastructure sector -
Water**

Construction on Ty Dieu Lake, Bo Xuyen Ward, Thai Binh City

**Infrastructure sector -
Transport**

Construction on Cay bridge and bridge heads of provincial road 394

**Infrastructure sector -
Water**

Construction on water supply system, Nghia Dan District