Overview of PPP legal framework and risk allocation

Bankok, 6-7 Dec, 2017
Overview of PPP legal framework in Vietnam

Decree 87/CP (1993) on BOT for foreign investment

Decree 77/CP (1997) on BOT for domestic investment

Decree 62/1998/NĐ-CP on BOT, BTO, BT for foreign investment

Decree 78/2007/NĐ-CP on BOT, BTO, BT

Decree 108/2009/ND-CP on BOT, BTO, BT

Decision 71/2010/QĐ-TTg on pilot PPP

Decree on PPP (Feb. 2015)
Overview of PPP legal framework in Vietnam

**LAW**
- Law on Construction
- Law on Investment
- Law on Public Investment
- Law on Public Procurement

**DECREE**
- Decree No. 15/2015/ND-CP on PPP
- Decree No. 30/2015/ND-CP on Investor Selection

**CIRCULAR**
- Circular No. 06/2016/TT-BKHĐT providing guidance on Decree 15
- Circular No.02/2016/TT-BKHĐT on preparing Pre-feasibility study and feasibility study of PPP Project
- Other Circulars by Line-Ministries: MOT, MOIT, MIC, MOF
- Circular No.15/2016/TT-BKHĐT on Standardized RfQ and RfP for PPP project
Main obligations of the Authorized State Agency

- Obligations during the construction, operation, transfer of the project facility
- Government guarantee and incentives
- Land acquisition
- Dispute settlement
Land acquisition

- The Provincial People’s Committee (PC) is responsible for site clearance and handover of the project site to the investor.
- The Authorized State Agency signing the PPP contract shall cooperate with the PC during land acquisition and handover.
Obligations during construction, operation and transfer of the project facility

• The Authorized State Agency shall supervise the quality and progress of construction of project facilities, the availability of service provided, the quality and number of items under the project facilities to be transferred at the end of the contract term.

• For BT project, the ASA is obliged to pay the investor using the value of the land use right of Another Project.
Government Guarantee and incentives

- Government incentives: (1) Reduction or waiver of tax liabilities; (2) Reduction or waiver of the land use revy and land rental.
- Government guarantee: (1) on foreign currency; (2) offtake contracts; (3) ensure that the land use remains unchanged during the contract term.
Dispute settlement

- Method of dispute settlement: (1) Mediation or negotiation; (2) Dispute settlement via Vietnamese court or Vietnamese/foreign arbitration
- Applicable law: (1) the law of Vietnam; (2) Parties may choose the foreign law in case the selected investor is foreign one.
Implementation of PPP Projects

Project Sector

- Transport: 158
- Energy: 21
- Water supply, sewage treatment: 9
- Other: 7

Type of Contract

- BOT: 121
- BT: 71
- BOO: 3

Legend:
- Transport
- Energy
- Water supply, sewage treatment
- Other
IMPEDIMENTS TO PPPs

• Rush to get construction done
• Unsolicited proposals of unbalanced risks
• Non-competitive selection
• Lack of understanding about business’ investment decision
• Reluctance to take into account commercial risks by authorities
• “Wait and see” attitude toward government capabilities to honor covenants
SUGGESTIONS

• Plan comprehensively and reserve time for well preparation
• Impose competition to unsolicited bids
• Facilitate the bidding with standard RFP, RFQ and standardized contracts
• Capacity building on PPP aspects
• Test/Try some of risk sharing schemes
• Build up sound market, with the PPP Law

Embed PPP programs and PPP projects with SDGs for public interests and sustainable development
Contact:

PPP Office (Ministry of Planning and Investment)

Tel: 080 44681
Fax: 080 44323
Email: PPPoffice@mpi.gov.vn
Website: www.mpi.gov.vn