

## The Partnership of Public-Private in Vietnam: Barriers and Some Raise Problems

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**Abstract:** The project in the form of a public-private partnership (PPP) has achieved many good results with a series of large projects implemented. PPP projects in the past time have actively contributed to the improvement of transportation, energy, urban infrastructure, wastewater, and waste treatment, etc. pressing public services of the people and the urgent need for infrastructure to develop the country's socio-economic, contributing to stabilizing the macro-economy, stimulating demand for domestic production, promoting socio-economic development, increase the competitiveness of the national economy. However, seeing the positives does not mean that there are no shortcomings. On the basis of research on the current situation of public-private partnerships in Vietnam over the past time, this study focuses on analyzing and pointing out some barriers to public-private cooperation in Vietnam, and some inadequacies. on policies and legal frameworks in implementing public-private partnership projects; thereby proposing solutions to improve the policy on public-private partnerships in Vietnam in the coming time.

**Keywords:** The partnership of public-private (PPP), Law of public-private partnership, barriers and raise problems.

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## INTRODUCTION

According to the Government's Report No. 25/BC-CP dated January 30, 2019, on the review of project implementation in the form of public-private partnership (PPP), there have been 336 PPP projects in the country so far. Of which, 140 projects are under BOT contracts, 188 projects are under BT contracts and 08 projects are eligible for other types of contracts; mobilizing about 1,609,295 billion VND to invest in developing the national infrastructure system.

PPP projects in the past time have actively contributed to completing the system of transport, energy, urban infrastructure, wastewater, waste treatment, etc. public services and the urgent need

for infrastructure to develop the country's socio-economic, contribute to stabilizing the macro-economy, stimulate demand for domestic production, and promote economic development. socio-economic development, increasing the competitiveness of the national economy. According to the assessment of the World Economic Forum (WEF), the overall quality of Vietnam's infrastructure in 2017 ranked 79th, an increase of 44 places compared to 2010 (ranked 123rd). Also according to the 2019 Global Competitiveness Report of the World Economic Forum, Vietnam ranked 77/141 in terms of overall infrastructure quality, 66th in transport infrastructure, and 87th in terms of transport infrastructure. utility infrastructure (World Economic Forum, 2019).

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In addition to the achieved results, practice shows that the implementation still has some shortcomings and inadequacies, notably: The selection, formulation, and appraisal of PPP projects have not been strictly implemented. The publication of projects and project lists has not been done seriously, openly, and transparently.

The core of all the main causes is the lack of rigor in state management of BOT projects, even misperceptions and misconceptions about BOT, not considering traffic BOT projects as public property and investment public-private sector, so there is no need for State audit; Even more, there is the phenomenon of deliberately ignoring, not distinguishing and equating a new construction traffic BOT project with a simple operation of maintaining, maintaining, strengthening, re-carpeting the unique road surface, creating bottlenecks. and force people not to have the necessary choice of transportation route on the basis of comparing utility, cost, and time required.

On the basis of research on the current situation of public-private cooperation in Vietnam over the past time, this study focuses on analyzing and pointing out some barriers to public-private cooperation in Vietnam, and some inadequacies. on policies and legal frameworks in the implementation of PPP projects; thereby proposing some solutions to improve the policy on public-private cooperation in Vietnam in the coming time.

## LITERATURE REVIEW

### Overview of PPP

PPP stands for Partnership of Public Private, ie investment in the form of a public-private partnership. This is a form of investment made on the basis of a contract between a competent state agency and an investor or project enterprise to implement, manage and operate an infrastructure project, provide services, and provide financial services. public service.

In Vietnam, PPP investment is not a new concept. The concept of PPP was first introduced in Vietnam in 1997 when Decree 77 - CP of the Government promulgated investment regulations in the form of build-operate-transfer contracts applied to investors' domestic investment was issued on June 18, 1997, and then a series of other legal documents were issued, but it was limited to the form of BOT (Build-Operate-Transfer), BTO (Build - Transfer - Operate), BT (Build - Transfer).

In addition, in recent years, the Law on Investment in the form of public-private partnership (hereinafter referred to as the Law on PPP) (2020) was developed, which outlines the concept of PPP

investment as follows: Public-private partnership (PPP) investment is an investment method made on the basis of long-term cooperation between the State and private investors through the signing and implementation of PPP project contracts. to attract private investors to participate in PPP projects". Thus, at a general level, the concept of PPP is a dynamic category and is understood very flexibly, because the PPP investment model is approached in many different ways and scopes, as well as viewed at different levels. The degree of variation depends on factors of policy, law, and the level of development of each country.

### The Models of PPP in Vietnam

There are many ways to classify the legal forms of PPP contracts. The legal forms of PPP contracts can be classified according to 03 groups of contracts. As follows:

- (1) BOT, BTO, BOO, O&M contracts - a form of fee collection from users;
- (2) BLT, BTL contracts - the form of payment by the State according to service quality;
- (3) BT contract - the form of exchanging public resources for works. Specifically, these types of contracts are explained in Clause 16, Article 3 of the PPP Law as follows:
  - a) Build - Operate - Transfer (Build - Operate - Transfer contract, hereinafter referred to as BOT contract);
  - b) Build - Transfer - Operate contract (Build - Transfer - Operate, hereinafter referred to as BTO contract);
  - c) Build-Own-Operate contract (hereinafter referred to as BOO contract);
  - d) Business - Management contract (Operate - Manage, hereinafter referred to as O&M contract);
  - e) Build - Transfer - Lease Contract (Build - Transfer - Lease, hereinafter referred to as BTL contract);
  - f) Build - Lease - Transfer contract (hereinafter referred to as BLT contract);
  - g) Mixed contracts as prescribed in Clause 3, Article 45 of this Law."

Each type has its own advantages and depends on the nature and goals of each specific project. The similarities of the above contracts are: they are all contracts with the form of direct investment, and the subject of negotiation, signing, and performance of the contract is a competent state agency and an investor. The object of the contract is the infrastructure works and systems for the purpose of providing public products and services. The investor must meet the general conditions and have additional mandatory conditions attached to

each type of contract, besides, the investor is entitled to transfer the rights and obligations under the project contract if meeting the requirements. meet the requirements of the law. The common point of BOT, BTO, BOO, and O&M contracts is that investors have the right to do business through the collection of fees from users of infrastructure facilities.

## **RESEARCH RESULTS AND DISCUSSION**

### **Some Barriers to Public-Private Cooperation in Vietnam**

Over a long period of implementation, PPP has made certain contributions, but in practice, it shows that there are still many challenges and barriers that need to be overcome in order to improve efficiency and develop forms. PPP for the next period. As follows:

First, there are many risks in the implementation of PPP projects:

One of the most complex issues with public-private projects (PPPs) is risk and risk sharing. There are many types of risks, not only policy risks, institutional risks, exchange rate politics, and risks in the construction process. PPP projects in traffic and infrastructure construction are basically very complicated, involving many parties, high risk, long time, high cost, etc. Therefore, the business Whether an enterprise chooses to invest in a PPP project or not depends a lot on whether that enterprise has the ability to evaluate investment efficiency, and forecast risks during project implementation to optimize risk management, and risk reduction.

In addition, if investing in expressways in the form of BOT, investors will also face many risk factors such as high construction investment costs, and high traffic volume growth unstable (partly due to the relatively high traffic rates on expressways, which vehicles may have to consider when choosing a traffic route) leading to a long payback period. long, or not able to recover capital, etc. For BT projects, at present, the option of returning investment capital through payment with state budget money is no longer allowed; may only apply the form of the return of capital through the return of land use rights for the implementation of other projects.

Second, difficulty in choosing investors to implement the project:

Not only in terms of capital return, but investor selection also encountered some difficulties for competent state agencies. That is to arrange capital sources to establish investment projects, prepare bidding documents for investor selection, costs for organizing investor selection, etc. In addition, at present, the preparation of bidding documents for investor selection does not have specific guidelines

and regulations on criteria for selecting suitable investors in terms of capacity, experience as well as many strengths specific to the nature of each project, etc. Therefore, in fact, competent state agencies are also confused in formulating criteria for investor selection when making bidding documents.

Currently, when considering the financial capacity to select investors to implement the project, state management agencies often consider meeting the investor's equity, in which the comparison is made. , comparing the total equity that the investor has (shown in the audited financial statements) must meet the equity capital allocated to the projects being and will be implemented. However, investors often only prepare equity capital to meet the implementation of ongoing projects, and very few investors prepare equity "waiting" for investment next projects. The proof of equity, therefore, faces many obstacles.

In addition, regulations on state supervision of BT and BOT projects have been mentioned in Articles 47 and 48 of Decree No. 15/2015/ND-CP, but are still unclear and specific. can easily cause "stepping feet" with the work of monitoring the quality of the works (by the supervision consultant of the investor). In addition, the cost norms for organizing the implementation of state supervision have not been issued, causing difficulties when organizing the implementation.

Third, difficulties in returning investment capital by collecting traffic tolls:

For traffic projects, the collection of tolls and the placement of toll stations are not reasonable, causing a stir in public opinion in the current period.

In fact, at present, the Government has no legal framework to regulate expressway tolls, toll regulations, and toll collection methods for inland waterways, maritime, aviation, and railways, while still calling for investors put money into projects that are lacking capital. This is also an issue that is of top concern to investors because, without a specific solution to this, the economic efficiency of the project is considered incalculable, especially in the condition that legal risks are still present. exist.

Currently, the fees for PPP projects, which are mainly in the form of BOT, are bound by separate contracts, based on calculations and negotiations by the State with investors, but there is no standard framework. chief. For investment enterprises, the fee level is a key indicator in the financial plan of an infrastructure project. Without it, there is no basis to calculate the next problems such as interest on capital, payback period, etc. Meanwhile, according to current regulations,

although the fee is already in the contract, it is not binding for implementation. Every time the fee is adjusted, the enterprise must submit it to the Ministry of Finance or the Provincial People's Committee, whose approval or not is beyond the control of the enterprise, which may lead to the reversal of the project's financial cycle.

Fourth, attracting foreign investment in the form of PPP is still low and inefficient:

In the past time, the PPP model attracted a number of large investors interested in learning, but the incentives, input price agreement, and the interests of the parties have not been clarified, and the project objectives are still general. leading to difficulties in project implementation, etc. Therefore, the rate of foreign investors learning and leaving is quite high. While Vietnam participates in the ASEAN Economic Community and new-generation trade liberalization agreements such as FTAs with the EU and TPP, are opening up prospects for promoting PPP with the participation of investors' foreign investment.

Fifth, raising capital for PPP projects faces many difficulties:

Investors participating in traffic projects are mainly domestic investors with weak financial capacity, mainly domestic loans, so they have low credit scores. Meanwhile, to implement investment projects in the field of transport infrastructure requires long-term capital because the payback period of these projects is often longer than that of other projects. Therefore, this is not a small difficulty for private investors.

Mobilizing long-term capital is a challenge for both domestic investors and the state budget. In order to obtain long-term capital, in the condition that the stock market has not yet developed, private investors mainly have to borrow capital from commercial banks, but in fact, Vietnamese commercial banks are very limited in terms of capital. with these long-term loans, especially during the period when tight monetary policy is applied. If there are banks, they require very strict loan guarantees such as government guarantees. However, currently, according to the Government's regulations, the State does not guarantee domestic commercial loans for enterprises. The channel to raise long-term capital, especially for private investors in the field of transport infrastructure is still limited.

Besides, domestic investors also have little experience in investing, managing, and exploiting public-private partnership (PPP) projects, and not understanding public-private partnership (PPP) investment. The risk has not been assessed yet, so implementation is still problematic. Meanwhile,

foreign investors have not participated in these projects due to some regulations that are not in line with international practices.

### **Some Inadequacies in Policy and Legal Framework in Implementing PPP Projects**

The inconsistency and uncertainty of the legal corridor system is also a limitation for attracting non-budget investment capital for projects. As follows

Implementation instructions are issued too slowly. Some regulations are not clear such as determining investors' profit, specifying other financial indicators, project payment conditions, etc.

Processes and procedures for compensation, site clearance, and resettlement are still lacking in synchronization and coordination.

The process and procedures for land allocation to implement the project are cumbersome, and take a lot of time, investors have to contact and work with many relevant state agencies.

Calling for investment in the form of BT paid by land faces many difficulties because the locality does not have a reserve of clean land.

The call for investment is done in the form of BT paid in cash, creating an additional burden on the local budget.

No central "PPP Unit" or central authority to explain the status of priority projects and reduce project complexity with multiple licensing "administrative procedures" and multiple timelines required for project development.

The government guarantee is not clear, the deadline for transferring BOT projects has not been determined, and the conditions for transferring ownership at the end of the term of the BOT type.

Conflicts between current legal documents (e.g. Decree on BOT, Law on General Investment, Law on Corporate Income Tax, unclear correlation role of Vietnamese and International Laws when settling disputes Complicated and convoluted procurement procedures, including the conclusion of negotiated contracts with preferred businesses, instead of a fair and transparent competitive bidding system.

The prerequisites for a successful PPP are compliance with the principles of market competition, and appropriate legal and institutional design, that address the role of both owner and

participant. There is risk sharing between the state and enterprises, and for the benefit of the people, there is social supervision.

### **Suggest Some Solutions**

In order to promote the advantages that the PPP investment method brings, according to experts, over the course of operation, many regulations have revealed limitations that make businesses unsuitable. Therefore, it is necessary to adjust and complete the legal framework, and review difficulties to promptly remove obstacles and backlogs for enterprises.

In order to protect the parties during the implementation of PPP projects, it is also necessary to create an effective control plan, share risks, and build a dispute settlement mechanism to minimize unnecessary disputes. be paid attention to. At the same time, state agencies need to change their economic management thinking, strengthen promotion institutions, and develop the PPP market, such as covering financial shortfalls or building budget lines. exclusively for PPP projects. Moreover, the public-private relationship between the State and the private sector needs to change to adapt to the times.

The Government, relevant ministries, and branches shall develop clearer regulations on the formulation and publication of a list of projects attracting pilot investment in appropriate and effective forms of PPP.

In particular, more clearly recognize the Government's risk-sharing mechanism for investors. Private participation in PPP means that the State transfers some of the risks to the private investor, while the investor's objective is to seek profit. Therefore, the allocation of risks and economic benefits among PPP project investors needs to be carefully calculated to ensure that investors are attracted to the project.

Publicity and transparency of information at all steps should also be promoted, such as project preparation, investor selection, and contract signing, which should be public and transparent on the national bidding network system, etc. have to be done. At the same time, strengthen the inspection, inspection, and audit of PPP projects; have sanctioning sanctions, and clear regulations on responsibilities and obligations of competent state agencies. Instead of appointing investors according to the "please-give" mechanism, PPP projects need to organize open, public, equal bidding, etc.

Not only that, the current legal framework just stopping at the Decree is not enough for

investors to feel secure nor can solve problems in implementation because it is still limited by current laws. Therefore, it is necessary to increase the efficiency of public-private partnerships. Specifically, state agencies need to change their economic management thinking, strengthen promotion institutions, develop the PPP public-private partnership market, and establish a National PPP development fund. Along with that, the public-private relationship between the State and the private sector needs to be changed to be in line with international practices.

### **CONCLUSION**

From the theory and practice of developing PPP forms, it shows that this method is quite close to the socialist-oriented market economy development philosophy of Vietnam. First of all, the goal is to put people at the center of development, enjoy the best services in transport infrastructure, energy, environment, health, and education, and at the same time improve the competitiveness of the country. economy, creating a premise for private economic development and attracting resources from outside. Second, is ownership still maintained by the whole people or public ownership, the mobilization of private participation is to improve the efficiency of public services as well as the efficiency of resources without raising problems. ownership conversion. Next, the state plays a very important role in leading the game, orienting development, expanding the development field, and sharing risks to ensure harmony between the interests of the community and the interests of enterprises. At the same time, through this mechanism, it is possible to create a favorable business environment, promote the role of a tectonic government, and contribute to the development of strong private enterprises.

The reality of PPP project implementation shows that this is an ongoing process of both implementation and adjustment and completion, a problem with many variables and many impacts, which the success condition requires. there is a high socio-political consensus, to really put public services to serve the interests of the people. In economic terms, this is also seen as having to fully implement the principles of the market, with competition, with shared benefits, between the state on the one hand and enterprises on the other, and the complexity is because ownership still belongs to the state, but it must be profitable for businesses to be able to deploy. In the absence of publicity, transparency, and close supervision of laws and institutions, this is an area where corruption and group interests are very likely to occur.



## REFERENCES

- Government. (2014). Decree 63/2014/ND-CP guiding the Bidding Law on contractor selection.
- Government. (2016). Decree 79/2016/ND-CP stipulates conditions for providing training services to foster professional knowledge, management, and operation of apartment buildings; knowledge of real estate brokerage practice, and real estate trading floor operation.
- Government. (2017). Decree 139/2017/ND-CP on penalties for administrative violations in construction investment activities; mining, processing, and trading in minerals used as building materials, production and trading in building materials; management of technical infrastructure works; real estate business, housing development, home, and office use management.
- Government. (2019). Report No. 25/BC-CP dated January 30, 2019 of the Government on the summary of the project implementation in the form of public-private partnership. Hanoi.
- Government. (2020). Decree 25/2020/ND-CP guiding the Bidding Law on investor selection (effective April 20, 2020, replacing Decree 30/2015/ND-CP).
- Van, H. V. (2022). The State's Legal Policy and Management on Civil Servants: The Current Situation and Issues Raised. *International Journal of Early Childhood Special Education*, 14(3). DOI: 10.9756/INT-JECSE/V14I3.688
- Khuyen, N. T., & Van, V. H. (2022). Determining The Role and Development Policy of the Collective Economic Sector In The Socialist-Oriented Market Economy Of Vietnam. *Central European Management Journal*, 30(3), 32-38. <https://doi.org/10.57030/23364890.cemj.30.3.5>
- Luan, P. H., & Giang, P. T. (2018). Research on the application of artificial intelligence- Artificial Neural Network- Supporting the selection of construction contractors according to the Vietnamese bidding process, Ho Chi Minh City University of Technology. Ho Chi Minh.
- Ministry of Planning and Investment. (2014). Official Dispatch 4054/BKHDT-QLDT 2014 implementing the Law on Bidding 43/2013/QH13 and Decree 63/2014/ND-CP.
- Ministry of Planning and Investment. (2015). Circular 19/2015/TT-BKHDT detailing the preparation of appraisal reports during the contractor selection process.
- Ministry of Planning and Investment. (2018). Official Dispatch 2683/BKHDT-QLDT in 2018 on regulations for individuals participating in bidding activities
- Ministry of Planning and Investment. (2021). Circular 09/2021/TT-BKHDT guiding the selection of investors to implement investment projects in the form of public-private partnerships and investment projects using land.
- National Assembly of the Socialist Republic of Vietnam. (2020). Law on Investment (Law No. 61/2020/QH14)
- National Assembly of the Socialist Republic of Vietnam. (2020). Law on investment in the form of public-private partnership (Law No.: 64/2020/QH14)
- National Assembly of the Socialist Republic of Vietnam. (2022). The Law on Amending the Law on Bidding.
- Phong, N. X., & Van, V. H. (2021). The Position and Role of the Vietnam Political System in Response to The Covid19 Pandemic. *European Journal of Molecular & Clinical Medicine*, 7(11), 2971-2984.
- World Economic Forum. (2019). Global Competitiveness Report 2019. Retrieved from [https://www3.weforum.org/docs/WEF\\_TheGlobalCompetitivenessReport2019.pdf](https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf)