

PPP Update: "Forget about past experience"

On 13 June the Ministry of Industry and Trade of Vietnam (MPI) held a public meeting in Hanoi to announce its preliminary list of 24 projects considered as candidates for the country's fledgling PPP pilot program. This note follows our client alert of 10 June in which we informed our readers of the meeting and provided the short list of projects we had received that day from the MPI. In this note we briefly report on the meeting, highlight the priority projects that were identified by the MPI and offer our view on the current status of Vietnam's PPP pilot program.

The Meeting

The MPI stated the purpose of the meeting was to obtain the views of interested parties as to the listed projects. In particular the MPI requested the attendees' views on whether these projects would be feasible and of interest to potential investors. Of the 24 project on the list, the MPI expects 2-3 projects to be selected from each sector for implementation as PPP pilot projects. During the meeting, the MPI identified 9 (of the 24) projects that will be given priority when selecting the final list of pilot projects, as presented further below.

Key Questions and Answers

A number of questions were raised by those in attendance. The crowd's questions fell into the following broad categories, which were answered as follows:

1. *What level of government support can investors expect when the PPP pilot projects are selected?*

The MPI made it clear that it expects the projects to generate a sufficient return to investors without the need for government intervention to cover viability gap issues. The MPI anticipates that each pilot project will be supported mainly (if not solely) from user fees. Shadow tolls and energy tolling arrangements where government assumes payment obligations are to be discouraged according to the MPI. Further, the MPI suggested that granting secondary rights in a project, such as commercial land rights along a highway corridor, to develop additional income streams from a project, are not viewed very favorably. The MPI has consistently stated that viability gap funding or other forms of guarantees from the government would be available for PPP pilot projects only in exceptional cases.

2. *Whether unsolicited projects not on the list would be considered?*

The MPI dismissed the chance for investors to raise unsolicited projects during at least the initial stages of the PPP pilot program.

3. *How will the current problems faced under Vietnam's BOT model be avoided, particularly those involving currency conversion risks?*

The MPI acknowledged that currency conversion risk is a current issue in some of the BOT project discussions. MPI suggested that during the feasibility study for each project, all risks will be identified, analyzed and put to the market for solutions. In speaking to currency exchange risk, the MPI stated that as the pilot projects are implemented over time, the government will better be able to estimate how often projects will go back to government for support on currency conversion. Based on that knowledge the government will be better able to establish a fund to deal with the currency exchange issue.

4. *How is the PPP pilot program going to be negotiated any faster than projects under the BOT model?*

"Forget about past experience!" was the MPI's emphatic answer. The MPI outlined a process where obstacles to project implementation that require a change to law or government policy would be addressed as a comprehensive package specific to the needs of the selected project. This package would then be presented to the Prime Minister (and possibly the National Assembly where necessary) for approval as a whole. The goal stated by the MPI is to avoid the need for prolonged discussion and point by point approval on multiple issues in a project—which is the current trend facing Vietnam BOT project negotiations. Selected projects are to go through some form of market sounding, such as a roadshow, prior to finalizing them for government approval and investor bidding. As a departure from the BOT model, the MPI expects a pre-approved, comprehensive package (which addresses all risk allocation) to be presented to investors at the time of tender.

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Priority Projects

Nine of the 24 projects were identified as priority projects from which the first PPP pilot projects are most likely to be selected in the near future. Those priority projects are listed in the table below. Five of the nine projects are highway projects, two are waterworks and two are hospitals. The MPI sought public opinion on the feasibility of these projects. However, it is too early to speak to the specifics of these projects without further information, which highlights the need for quality feasibility studies on these projects. We understand these projects were selected on the basis of need and perceived economic viability. We are not certain whether complexity and relative ease of implementation was factored into the short listing of these projects. Typically social infrastructure, such as hospitals, are considered amongst the more complex PPP projects.

Conclusion and Comments

Monday's meeting was another step closer to a PPP model in Vietnam. Decision 71 came into effect in January this year permitting the MPI and ministries to implement a PPP model on selected pilot projects. In Spring the PPP Task Force Team was put into place with Mr. Dang Xuan Quang as its head. At this time the Task Force Team has identified 24 candidate projects, with nine deemed as priority projects. The next steps will be for the Task Force Team to select the PPP pilot projects and move into the implementation phase of this program. We understand that for each project a consortium of advisors will be selected to conduct the feasibility, draft the tender documents and prepare the concession agreement so that the project can obtain government approval on the terms of the concession agreement, which will then be presented "as a comprehensive package" to investors for bidding. It is often noted that the BOT program, which has been developing since 2007, has failed to deliver much needed infrastructure in Vietnam in a timely manner. Lately concerns are being raised that the government's position on key bankability issues is moving further from positions that investors and their lenders can accept.

When the MPI says "forget about past experience" in reference to the BOT program, we hope this means that the following key steps, inferred from MPI's messages, will be taken to differentiate the PPP pilot program from the current BOT program:

- Adequate resources will be allocated to providing investors with high quality, comprehensive feasibility studies for each project that objectively address the real risks of the project (in addition to the technical and economic features of the project).

- The Task Force Team will objectively assess the project's bankability issues, in part through conducting quality market soundings of potential investors and lenders. This will require a dispassionate and non-political dialogue between real market players and the Task Force Team aimed at determining the market's tolerances on each bankability issue.
- The market's view will be taken seriously and each project will be structured to allocate risk where it may best be managed, taking into account the market's real tolerances.
- Quality, bankable documentation will be presented to bidders, providing bidders with an even playing field and limiting the issues that must be negotiated.

These steps remain to be implemented over the coming months. Hogan Lovells will be monitoring these carefully and will keep our clients informed. For more information please feel free to contact:

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