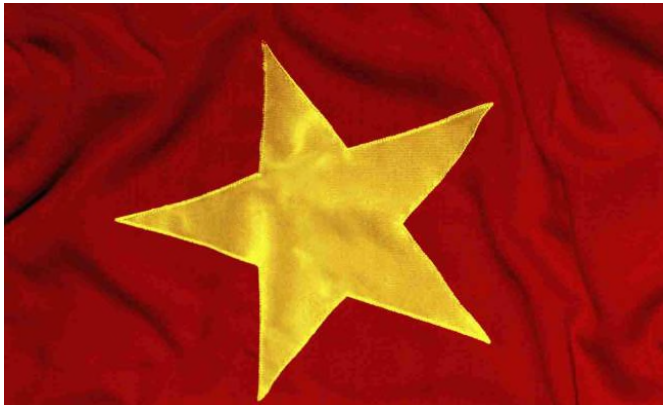


New PPP Decree is released in Vietnam



The release of the 2015 PPP Decree (“**PPP Decree**”), consolidating the two previous regimes under Decree 108 and Decision 71, sends a positive signal to potential investors that the Government of Vietnam is still committed to using PPPs as a vehicle to encourage investment in the infrastructure sector. However, there are not as many substantial changes in this new Decree as had been hoped (based on our discussions with MPI and previous drafts). Below is a brief snapshot of some of the positive changes and issues that remain.

Positive changes

- The PPP Decree replaces both Decree 108 on BOTs and Decision 71 on pilot PPP projects and will be the sole regime for PPPs in Vietnam. It will take effect from 10 April 2015.
- The PPP Decree helps to clarify the process for preparation and implementation of PPP projects in Vietnam (e.g., Article 9 details procedures for implementing PPP projects, including clearer guidance on the roles of different authorities in the approval process).
- The PPP Decree also provides a framework for unsolicited projects. Investors may propose suitable projects to the appropriate government body for consideration.
- There is no limit on state support for individual projects (previously under Decision 71, state support was capped

at 30%). Such support is to be determined on a case by case basis.

- The PPP Decree expressly allows foreign governing law to apply to government guarantee documents (in addition to project contracts), although it still has to be in conformity to the laws of Vietnam.

Some specific issues

- There is no clear commitment on 100% foreign currency convertibility. The amount of foreign currency guaranteed to be convertible will be determined on a case by case basis.
- PPP project companies are entitled to exemptions or reductions on land rent (subject to the Land Law). However, any mortgage of land use rights is also subject to the Land Law, which does not allow foreign invested companies to mortgage land use rights if they are exempted from paying rent on the land. A mortgage may be permitted if the land rent amount is simply reduced (instead of waived), but it is unclear how the Land Law would treat such a scenario. In practice, it may still be subject to negotiation.
- No time limit exists for the negotiation and signing of project contracts. This poses the risk of lengthy negotiations (as is the case for most current BOT projects).
- We note that tenders for the selection of PPP investors will follow the Law on Public Procurement. Under the Law on Public Procurement, there is no provision for the standardization of documents pre-tender that may reduce the negotiation time. The Law on Public Procurement is also vague on the details for the selection of investors under PPPs. A decree on the selection of investors is being discussed within the government in order to provide more detailed guidance on this topic.

In short, while the PPP Decree provides for clarity on certain issues, the core concepts are not substantially different from Decree 108 and Decision 71. We will need to see implementing regulations for further guidance on the PPP Decree in practice. Furthermore, certain issues remain, that perhaps cannot be addressed without looking to other areas of the Vietnam legal framework, such as foreign currency

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convertibility, mortgage on land, and governing law. Until these issues are resolved more definitively, we expect that investors will continue to press the government to adopt more bankable policies to encourage the development of PPPs.

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