

CORRUPTION RISK IN INVESTMENT INFRASTRUCTURE PROJECTS UNDER PRIVATE- PUBLIC PARTNERSHIP (PPP)

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PART I: LEGAL FRAMEWORK FOR PPP IN VIET NAM

Period
1992 - 2004

- 1992 PPP first appeared in the form of BOT contract applied to foreign investors
- 1996 Adding BTO and BT contracts for foreign investment
- 1997 regulate BOT contract applied to foreign investment

Period
2005 - 2013

- 2005 The Investment Law eliminates the discrimination between foreign investment and domestic investment
- 2007 The decree on BOT, BT, BTO is applied consistently
- 2010 Regulation on pilot investment in the form of PPP

Period
2014 - Now

- 2014 The PPP concept is consistent in many laws
- 2015 Merging Decree on BOT, BTO, BT and Regulation on pilot PPP investment
- 2019 Developing and submitting the PPP Law

PART II: CORRUPTION RISK IN PPP INFRASTRUCTURE PROJECTS IN VIET NAM

The distinctive features of PPP infrastructure investment in Viet Nam :
+ Need for long-term investment and growth in crisis
+ Most of investors are the construction contractor

By 2011, the number of PPP infrastructure projects in Viet Nam has not been high and mainly scattered

PPP investment in infrastructure is basically suitable to the long-term investment and for investors having financial capacity and being optimistic about macro economy.

In 2012, the domestic economy was very difficult, real estate market and construction face with crisis, the number of bankrupt enterprises increased.

However, the period 2012-2014 witnessed an explosion of PPP projects in the transport sector, mainly BOT and BT contracts.

PART II: CORRUPTION RISK IN PPP INFRASTRUCTURE PROJECTS IN VIET NAM

1. Preparing, publicizing project list and project proposals

Decree No. 78/2007/ND-CP: if the investor proactively prepares a project proposal and is approved, it will be assigned to negotiate a project contract. This regulation is later revised to request investors to prepare project proposals but must still publish the project proposals. However, in fact, local inspectorates did not publish the list of projects and proposals at the time of inspection → the corruption risk

2. Selection of investor

The majority of PPP projects appoint the investor to conduct with the reason that no other investors are interested in. Many important parameters of PPP project (capital disbursement progress, loan interest rate, investor's profit, etc. are decided through negotiation and negotiation of project proposal. Practical inspection show that many signed PPP project agreements contain conditions which are more favorable for investors than the common market → corruption risk.

3. Planning the total investment for project's works construction

- Decree No. 78/2007/ND-CP: Investors, after being selected, shall prepare and self-approve projects → projects are approved arbitrarily. Later on, the regulations require the state agency to approve the project, though it is still possible to assign investors to prepare the project in case the investor proposed it by himself.

Investors always tend to push up the total investment when making project proposals. State agencies are not always able to supervise and control every element. Practical inspection on PPP projects has showed that most of them have a higher investment rate than the rate regulated by Ministry of Construction, with a highly pushed up total investment (for example: wrong volumes, unit prices, construction methods, containing many inappropriate and unnecessary items). → corruption risk

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4. Investor's equity contribution

- Most investors have a starting point as contractors with limited financial capacity. Designated investors try to push up the value of works when preparing feasibility study report and technical design; self-executing constructions or requesting informal benefits when organizing bidding to select contractors; return turnaround to meet the minimum equity requirement.

- Practical inspection show that that all investors contributed capital slowly according to the schedule, some projects have signs of lack of transparency and legalized accounting books. Some projects that have not contributed enough capital but have transferred their capital contribution

→ Corruption risk

5. Project implementation supervision

- According to regulations, investors and project enterprises have to do the self-supervising and managing. Authorities only supervises the compliance of obligations of investors and project enterprises under the project contract (later BT project is more strictly regulated)

- However, in reality, the mechanism of inspection and supervision of investment activities of authorities' operation is ineffective, almost entrusting the whole to investors.

→ Corruption risk

PART II: CORRUPTION RISK IN PPP INFRASTRUCTURE PROJECTS IN VIET NAM

6. Payment Method in BT contract

- Decree No. 78/2007/ND-CP and Decree No. 108/2009/NĐ-CP: BT contracts can be paid in cash → a BT project paid by government bonds. After that, cash payment method is removed and BT projects are mainly paid with land fund.

- However, the actual application of land price determination method is still inadequate, the price of land used to pay investors is often lower than the market price → corruption risk

7. Management and collection of fee for returning the capital

- Before changing to the service pricing mechanism under the law on prices, the collection of fee according to a separate Circular of the Ministry of Finance for each project.

- The toll collection in the one-stop lane is mainly implemented through tearing tickets by hand; the system of equipment and toll collection software are not synchronized, stable and subject to interference

- Many are subject to the irregular exemption → corruption risk



Thank You