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Public-Private Partnership in developing countries: a case study of Vietnam

Dr. Dinh Duc Truong[a]
[a] Associate Professor & Dean of Faculty of Environment, Climate Change and Urban Studies, National Economics University, Hanoi, Vietnam

Abstract

Vietnam has effectively moved from a closed, centrally planned economic model to a dynamic, market-oriented, integrated economy worldwide. However, to fulfill its infrastructure objectives by 2040, Vietnam will need to mobilize more capital because state debt is approaching the threshold set by the National Assembly. Furthermore, borrowing funds from international development banks is restricted. As a result, the Vietnamese Government will need to attract novel investment. Private sector investment through Public-Private Partnerships (PPP) has been a global trend during the last decade. It is a strategy for investing in and sustaining economic infrastructures, such as transportation, public utilities, social infrastructure, and other specialized services. Because of the disparity between Vietnam's investment demands and financial capabilities, the Government has prioritized mobilizing private resources for public development goals, including public-private partnerships (PPPs). However, until 2014, Vietnam's PPP sector was still considered a developing market. This article analyzes the successes and challenges of PPP implementation in Vietnam, including literature review, legal framework, achievements and prospects, implementation challenges, and some solutions to promote PPP implementation in Vietnam based on domestic analysis and international experience.

Keywords: Infrastructure, PPP, Public-Private Partnership, Vietnam.

1. Introduction

Vietnam has successfully transitioned from a closed, centrally planned economic model to a dynamic, market-oriented, integrated economy that connects with the global economy. Starting from the economic reform period called "Doi Moi" in Vietnamese in 1986, Vietnam has continuously recorded many economic growth and poverty reduction achievements. In 2009, Vietnam became a middle-income country. In 2016, the poverty rate fell to 9.8 percent (General Statistics Office- World Bank Poverty Line) from approximately 60 percent in 1993. Gross domestic product (GDP) grew at an average of 6.14 percent per year between 2011 and 2017 and reached 7.08 percent annual growth in 2018. About 70 percent of Vietnam's population is currently classified as having stable income or economically safe, of which 13 percent belong to the global middle class **(Hueskes et al., 2017)**.

According to the Global Infrastructure Outlook, Vietnam will need more than $600 billion to meet its infrastructure targets by 2040. During this time, public debt is approaching The National Assembly's ceiling of 65% of gross domestic product (GDP). Also, the ability to borrow capital from multinational development banks is limited. Therefore, the Vietnamese Government will need to mobilize new investment flows. Due to current budgetary constraints, it is estimated that more than 50% of the required funding will come from the private sector **(Kivilä et al., 2017)**.

Over the past decade, private sector investment through PPP has become a worldwide trend. It is a method of investing and maintaining economic infrastructure, including transportation, public utilities, social infrastructure, and other specialized services. The gap between Vietnam's investment needs and financial capabilities causes the Government to focus on mobilizing private resources for public development goals, including public-private partnerships (PPPs). PPP is included in the legal framework l, 1997 by Decree 78/1997/ND-CP. However, the PPP market in Vietnam was still considered an emerging market until 2014 **(Economist Intelligence Unit, 2014)**. Subsequently, the general framework of PPP has been strengthened through revised Decrees and, more recently, the introduction of the Law on Investment in the form of PPP 2020.

This article analyzes the successes and challenges of PPP implementation in Vietnam. In addition to the literature review on PPP, the article focuses on three main groups of content, including (i) PPP Legal framework in Vietnam, (ii) PPP achievements and prospects in Vietnam, (iii), Challenges in PPP implementation, and (iv) Solutions to promote PPP implementation in Vietnam based on domestic analysis and international experience.

2. Literature Review

A public-private partnership (PPP, 3P, or P3) is a generally long-term cooperation agreement involving two or more government and business sectors **(Roehrich et al., 2014)**. This form includes governments and companies that cooperate to complete a project or the provision of public services. Multiple nations have adopted public-private partnerships, mainly for infrastructure projects such as construction sites, schools, hospitals, transportation, and water and waste systems **(Bovaird, Tony, 2015)**.

Many countries and investors have debated the concept of PP in recent times, mainly arguing that PPP is a financing tool. They are concerned that the return on investment by the State is lower than that of the private donor. PPPs are closely related to concepts such as privatization and government service contracts **(Wettenhall, R., 2019)**. The general lack of understanding of PPPs and the lack of financial transparency complicate the PPP evaluation process. Proponents of P3 emphasize risk-sharing and innovation, while critics of P3 decry high costs and accountability issues. For example, the evidence on the effectiveness of PPPs in terms of value for money and efficacy is often confused, unclear, and incomplete **(Whiteside, Heather, 2016)**.

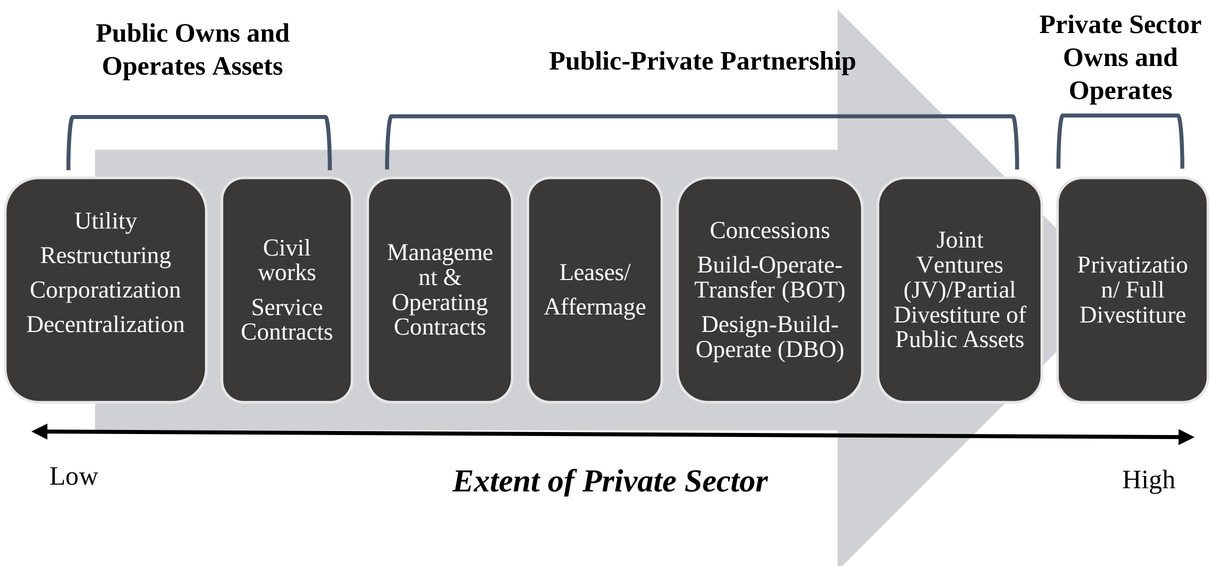
There is no consensus on the definition and interpretation of PPP. The duration can be hundreds of long-term contracts with various risk allocations, funding calls, and transparency requirements **(Marta Marsilio et al., 2011)**. Conceptually and practically, the advancement of PPP is a new product of late 20th-century public management and globalization. Although there is no formal consensus on the definition, essential stakeholders have defined the term **(Hodge, G.A. and Greve, C., 2016)**.

For example, the OECD officially published the definition of a public-private partnership (PPP) as "a long-term contractual arrangement between a government and a private partner whereby the private partner provides and funds public service using capital assets, sharing the associated risks" **(OECD,**

2012). The Government of India defines P3 as "a partnership between a public sector organization (funding agency) and a private sector organization. A private entity is a legal entity with a capital of 51% or more. This P3 is a partnership created to manage the infrastructure for the public for a specific period, called the concession period, in which the private partner entered the auction **(Tawalare, Abhay & Balu, Yazhini, 2016)**. A P3 occurs when private entity finance, builds, or manages a project to receive a payment stream from the Government. (directly), or users (indirectly) during the expected duration of the project or some other agreed-upon time" **(Policy Analysis Edition No.05. Pearson, Inc, 2011)**.

A 2013 study published in the State and Local Government Review found that the definition of a PPP also varies widely from city to city: "Many public and private officials tout PPP for many activities, while in reality, the above relationship is an only contractual, franchise or transfer some previous public services to a private organization, or non-profit organization. " A more general term for such arrangements is "sharing service provision". In it, public sector organizations and private companies or non-profit organizations work together to provide services to the people **(Hilvert, Cheryl; Swindell, David, 2014; Local government services and contracts, 2014)**.

Figure 1. showing the spectrum of Private Sector Participation in Infrastructure and development projects



Source: Understanding Options for Public-Private Partnership in Infrastructure ***(Liang Ma et al., 2019)***.

PPPs bring monetary and non-monetary benefits to the public sector. It solves the central problem of minimal funding for local public sector or infrastructure development projects. From there, the PPP helps to allocate public capital to other local private investors. It is a mechanism for distributing project risk to both the public and private sectors. PPP targets both sectors (public and private) to improve the efficiency and process of project implementation in providing services to the public. Most importantly, PPP emphasizes Value for Money (VfM) - focusing on cost reduction, risk allocation, rapid deployment, service improvement, and possibly additional revenue generation.

The Government and the private sector can share risks at different stages of PPP implementation. When the private sector invests in public projects, the risk of excess capital costs and project delays can be significantly reduced. At the same time, by completing the design, construction, and operation of PPP projects, the private sector creates a model of the public service structure. This structure has a more efficient hierarchy.

Although PPP is seen as a form of infrastructure construction at the expense of the private sector, however, "nothing is free". In some build-operate-transfer (BOT) contracts, problems arise, such as cost overruns, unrealistic prices, and inaccurate earnings forecasts. In addition, the issue may be a legal dispute between the private sector, the operator, and the Government. In many cases, the Government and the private sector cannot bear the costs, leading to the risk of bankruptcy of private enterprises and the inefficiencies of PPPs. Besides, many political obstacles also affect the effectiveness of the PPP form.

3. Methodology

This study was conducted within an analytical framework, covering policy/institutional, operational, financial levels, and considers issues from the perspectives of different stakeholders (policymakers, professionals, public entities, private partners, financial institutions).

PPP achievements and prospects in Vietnam. This section reviews the PPP legal framework developed at the central level and examines the current implementation of medical PPP projects among ministries.

Challenges in PPP implementation in Vietnam. This section identifies barriers at various levels, including policy/institutional, operational and financial support levels. Essential issues are analyzed and discussed from stakeholders' perspectives in preparing and implementing PPP projects, including policymakers, public organizations, private investors, and financial companies.

Some solutions to address barriers have been identified and better medical PPP implementation. This part of the study proposes actions for MOH and relevant government agencies to overcome the obstacles and increase PPP investment in health in Vietnam based on the current study's findings.

4. Data collection

The research collects qualitative and quantitative data from primary sources (self-assessment survey, semi-structured interviews) and secondary sources (document review). In addition, information is also collected from websites of ministries, agents, and branches, official reports and official fees on PPP in Vietnam, experience, and research on PPP in international documents. The data collection methods are summarized in Table 1.

A total of 23 semi-structured interviews were conducted in both the public, private and financial sectors. Interviews were conducted with five policymakers in charge of PPP at the central level (Ministry of Health, Ministry of Planning and Investment, Ministry of Finance, Ministry of Transport, Ministry of Natural Resources and Environment); 56 policymakers and implementers at provincial level, 8 PPP projects, 1 international NGO, 3 representatives from domestic/international financial institutions.

Table.1. Data collection methods applied to study sections

Study sections	Data collection methods		
	Document review	Self-assessment survey	Semi-structured interviews
Features of Medical PPP	+		
Progress and achievements	+		+
Difficulties	+	+	+
Solutions to overcome difficulties	+	+	+

Source: Original table for this study

6. Findings

6.1. PPP legal framework in Vietnam

In Vietnam, public-private partnerships in BOT, BTO, and BT contracts had existed since 1997 when the Government issued Decree 77/ND-CP on BOT forms applicable to investors in Vietnam and Decree 62/1998/ND-CP on BOTBTO-BT form applicable to foreign investors. On May 11, 2007, the Government issued Decree 78/2007/ND-CP on BOT-BTO-BT forms applicable to all types of ownership in the economy, including foreign and domestically owned. Decree 108/2009/ND-CP later replaced Decree 78/2007/ND-CP, and the Prime Minister issued Decision 71/2010/QD-TTG piloting the investment model in the form of PPP format. It also comprehensively regulates the types of public investment in PPP projects.

The concept of PPP has been recognized by more effective legal documents, including Law on Bidding 43/2013/QH13, Law on Public Investment 49/2014/QH13, Law on Construction 67/2014/QH13, and Law on Investment April 67/2014/QH13. The Government issued Decree 15/2015/ND-CP on PPP, consolidated Decree 108/2006/ND-CP, and Decision 71/2010/QD-TTG and issued Decree 30/2015/ND-CP guide detail the implementation of the Law on Bidding in the selection of investors. In 2018, Decree 15/2015/ND-CP was replaced by Decree 63/2018/ND-CP. Decree 63/2018/ND-CP defines PPP as a form of investment made based on a project contract between a competent state agency and an investor or project enterprise for construction, renovation, and operation, business, management of infrastructure, providing public services. This definition differs significantly from the definition of PPP in other countries.

Decree 63/2018/ND-CP, as well as the Law on PPP Investment, stipulate 8 types of PPP contracts as follow:

- Build - Operate - Transfer (BOT)
- Build - Transfer - Operate (BTO)
- Build - Transfer (BT)
- Build - Own - Operate (BOO)

- Build - Transfer - Lease (BTL)
- Build - Lease- Transfer (BLT)
- Operation - Maintenance (O&M)
- Combination (or mixed contracts)

Figure 2. showing the overview of the PPP legal framework in Vietnam

<table>
<tr><td rowspan="2">Laws
passed by parliament</td><td>Budget Law</td><td colspan="2">Construction law</td><td>Land Law</td><td>Enterprise Law</td></tr>
<tr><td>Law on the use and management of public property</td><td>Investment Law</td><td>Draft PPP Law</td><td>Law on Public Investment</td><td>Law on Bidding</td></tr>
<tr><td>Decrees
issued by the Government</td><td>Decree 69/2019/ND-CP on using public assets to pay investors in BT projects</td><td colspan="2">Decree 63/2018/ND-CP on investment in the form of PPP</td><td colspan="2">Decree 30/2015/ND-CP on the selection of investors for PPP projects</td></tr>
<tr><td rowspan="2">Circulars
promulgated by the Minister of MPI, MOST, MOST, MOH, etc.</td><td>Circular 88/2018/TT-MOF on financial management in PPP investment projects</td><td colspan="2">Circular 09/2018/TT-MPI on guiding the implementation of Decree 63/2018/ND-CP</td><td colspan="2">Circular 15/2016/TT-MPI on guiding the bidding documents to select investors for PPP projects</td></tr>
<tr><td colspan="2">Draft Circular of the Ministry of Health on guiding the implementation of PPP investment projects in the health sector</td><td colspan="3">Circular 19/2019/TT-MOST on guiding the field of investment and the content of the feasibility study report of PPP projects in the transport sector</td></tr>
</table>

Note: BT - Build and Transfer; MOF - Ministry of Finance; MOH - Ministry of Health; MOST - Ministry of Transport; MPI - Ministry of Planning and Investment; PPP - Public-Private Partnerships

Source: Original figure of this study

On June 8, 2020, the National Assembly passed the Law on Public-Private Partnership (PPP) Investment No. 64/2020/QH14. The Law consists of 11 chapters and 101 articles. It is a unified Law regulating investment activities, attracting the private sector to invest in many essential infrastructure areas in public-private partnerships. Some crucial new points of the Law are as follows:

Regarding the investment field, the PPP Law stipulates 05 essential areas for PPP investment to concentrate specific resources, including (1) Traffic, (2) Power grid, Power plants (except hydroelectric power plants and the case where the State monopolizes electricity (provisions of the

Electricity Law); (3) Irrigation, clean water supply, drainage, wastewater treatment, waste; (4) Healthcare, education, and training; (5) Information technology infrastructure. Regarding the investment scale, the Law on PPP stipulates that the minimum total investment size for PPP investment is 200 billion VND. For projects in difficult socio-economic conditions, especially in health, education, and training, this value is 100 billion VND. Regarding the classification of PPP projects and the authority to decide on investment policies, the Law stipulates the category of projects associated with the authority to decide on investment policies, including the National Assembly, Prime Minister; Ministers, heads of central agencies, other agencies, and provincial People's Councils. Competent authorities that decide on investment policies are the authorities that determine the right to adjust investment policies ***(*****Tawalare, Abhay & Balu, Yazhini, 2016)**.

Regarding State capital in PPP projects, the Law specifies the purpose of using state capital management methods in PPP projects. In which, with the state capital to support (i) construction of works, infrastructure systems, (ii) compensation, site clearance, resettlement, and temporary construction support; the participation limit in a PPP project does not exceed 50% of the total investment and is managed and used in two ways: (1) Separated into sub-projects in a PPP project, managed and used by state capital according to provisions of the Law on public investment, (2) Arranged into specific items according to the ratio and value, progress and conditions specified in the contract.

Regarding the sharing mechanism of revenue increase and decrease, the Law stipulates that the sharing mechanism is applied to all PPP projects with a fixed rate of 50%-50% for both parties. Also, this sharing mechanism is based on periodic control and management of annual revenue. When the actual revenue is only 75% of that in the financial plan, revenue sharing is only applied when all measures have been taken to adjust prices, fees for public products, services, or deadlines of contracts. In addition, this revenue sharing must also be audited by the State Audit of the decrease in revenue.

Regarding capital mobilization of project enterprises, in addition to the capital mobilization from banks' credit, the PPP Law also allows enterprises to issue corporate bonds to mobilize capital for implementing PPP projects.

Regarding the State Audit of PPP projects, the Law specifies the scope and content that the State Audit performs auditing on PPP projects, including managing and using public finance and public assets in the PPP project.

To implement the PPP Law, the Government plans to issue 03 Decrees guiding the Law. The Law on Investment in Public-Private Partnership (PPP) will take effect from January 1, 2021.

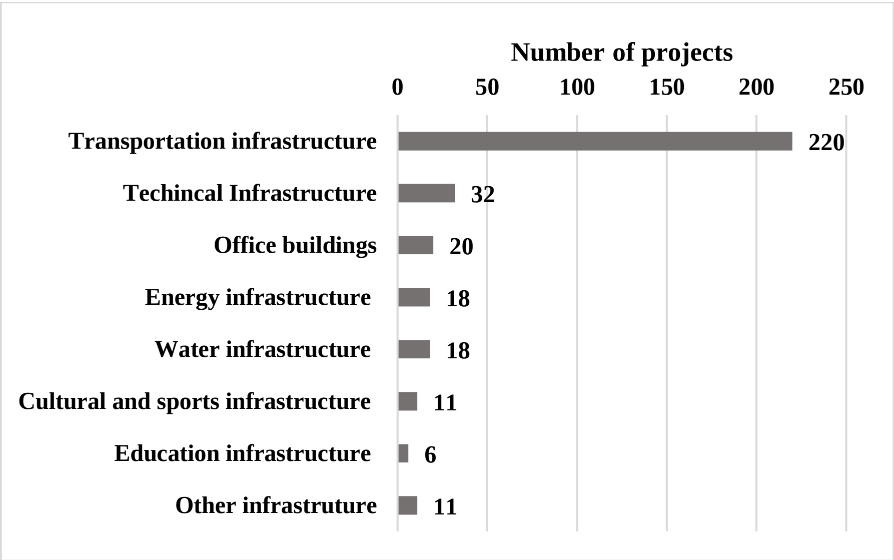
In addition, investment in the form of PPP is also regulated in the following legal documents: Investment Law No. 67/2014/QH13 dated November 26, 2014, Investment Law No. 49/2014/QH13 dated June 18, 2014; Decree No. 15/2015/ND-CP dated February 14, 2015, and Decree No. Decree 30/2015/ND-CP dated March 17, 2015, and some other legal documents.

6.2. PPP achievements and prospects in Vietnam

According to official statistics of the Vietnamese Government, by the end of 2019; Ministries, sectors, and provinces have signed and implemented 336 PPP projects, with a total investment capital of 1,609,335 billion VND (about 70 billion USD).

- The majority of PPP projects are in the transport sector (220 projects); resettlement housing, dormitory (32 projects); office buildings (20 projects); energy (18 projects); water supply, drainage, environment (18 projects).
- There are 18 projects under Build-Operate-Transfer (BOT) for thermal power with a total investment capital of 41,743 billion USD in electric energy. According to the **World Bank (2020)**, foreign investment through PPP projects in Vietnam is only made in the energy sector, where projects have long terms and are often worth billions of dollars. In addition to PPP contracts, the power sector has attracted a large proportion of private investment in independent power plants (IPPs), including foreign investment.
- The agricultural sector is less attractive to PPP projects, with only 23 projects. It dues to the fact that agriculture is perceived to be riskier. Also, agriculture is supposed to have a lower return rate and disproportionate investment from the State.
- Private participation is mainly through 'socialization' for the health care sector, not through PPP contracts. According to the **World Bank (2020)**, there are 240 private hospitals in 50 provinces (accounting for 13% of the total number of hospitals) and 35,000 private clinics, providing services to 31.2% of outpatients and 6, 3% inpatient services. Most of the projects are proposed and constructed at the provincial level, especially in Ho Chi Minh City. These projects focus mainly on infrastructure development rather than primary care and preventive health care services. The projects are all concentrated in major cities and provide a better patient experience **(Cui et al., 2018)**.

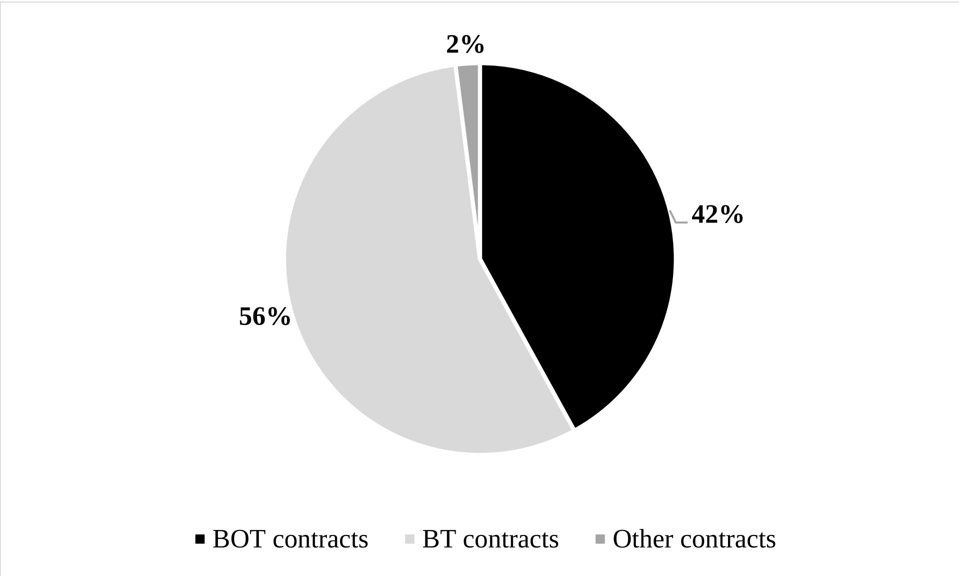
Figure 3. showing the number of signed PPP projects in Vietnam (till 2019).



Source: Original figure of this study

Among contract types, Build-Operate-Transfer (BOT) and Build-Transfer (BT) forms dominate, accounting for more than 95% of PPP projects. According to international practice, BT contracts are not considered a form of PPP because of the relatively short duration of the contract and limited risk-sharing and management responsibility by the private sector **(Aerts et al., 2016)**. However, BT contracts are the most commonly used contract type in Vietnam, accounting for 188 (or 56 percent) of the 336 signed PPP contracts. When interviewed about PPP contracts with a large commercial bank in the country, the bank said they are only interested in financing BT projects where land is the collateral. BOT contracts are also prevalent, accounting for 42 percent of all PPP contracts. Other contract types, including BOO, BLT, and BT-BOT mixed contracts, account for only 2 percent (see figure 4). No BTO, BTL, O&M contracts were signed.

Figure 4. showing the classification of 336 PPP contracts signed in Vietnam



Source: Original figure of this study

Hanoi and Ho Chi Minh City are the two localities attracting the most significant PPP projects in the country. In Hanoi, until September 2018, an investment proposal in the form of PPP has been developed with 128 projects with a total capital of VND 332,030 billion. Eight projects with a total capital of VND 13,683 billion have been completed; nine projects with a total investment of VND 15,960 billion have been implemented. In Ho Chi Minh City, 23 projects have been completed and signed with over VND 71,000 billion total investment capital. In addition, Ho Chi Minh City also has 130 projects in preparation for investment with a total estimated capital of approximately VND 400,000 billion. It continues to call for 243 projects with an estimated total investment of about VND 869,420 billion.

According to the Asian Development Bank, currently, only 10% of Vietnam's infrastructure is financed by the private sector, much lower than many other middle-income countries in Asia. According to the 2019 Global Infrastructure Investor Survey Report of Singapore's EDHEC Infrastructure Research Institute, Vietnam is in the Top 5 emerging countries with the most potential in the infrastructure market in the next five years and other countries such as India and China, Brazil, and Indonesia.

The Vietnam Infrastructure Conference 2019 reported that only 20% of the country's road area is paved, and Vietnam recently approved a plan to build a 1,372km north-south highway by 2030. This plan worths an estimated $14 billion. In recent years, population growth in major cities has strained and exceeded the capacity of existing connectivity and utility systems. With 50% of Vietnam's population expected to live in cities, Hanoi and Ho Chi Minh are building public transport systems worth more than $22 billion to reduce private vehicle ownership and improve air quality. The recently approved plan to build a 1,372km North-South expressway by 2030 is estimated to cost US$14 billion, even though the procedure is facing certain obstacles. Various highway projects are planned and implemented to improve connectivity between these major cities. Similarly, Vietnam also announced the development and upgrade of urban utilities. It planned up to 44 projects with a total investment value of up to 120 billion USD in the electricity and road sectors.

According to **Villalba-Romero, Felix & Liyanage, Champika (2016)**, many international investment funds are interested and willing to invest in infrastructure. Vietnam is an attractive destination for investment capital flows to these international funds, thanks to a stable political environment, a high level of security, and no threat of terrorism. However, when competing with other countries in attracting foreign investment, these countries have a better legal and institutional environment conducive to private investment than Vietnam's. Some Japanese investors actively investing in the electricity sector said they are willing to expand their investment into other areas such as healthcare, airport, and road construction. However, this could be done if there is a mechanism to protect them and guarantee to compensate for the specific level of risk they may take.

6.3. Challenges in PPP implementation in Vietnam

After more than 20 years of implementing PPP, it has made specific contributions to socio-economic development in Vietnam. However, in practice, it shows that there are still many challenges and barriers to overcome to improve efficiency and develop PPP in the future:

Firstly, 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 **(Wang et al., 2016)**. There are many types of risks, including policy risks, institutional risks, exchange rate politics, and the construction process. PPP projects in traffic and infrastructure construction are complex, involving many parties, high risk, long time, high cost, etc. Therefore, whether businesses choose to invest in a PPP project depends on the business's ability to evaluate investment efficiency and forecast risks during project implementation to optimize risk management and reduce risk.

Researching on the implementation of PPP projects in Vietnam, OECD experts said that private investors are still not interested in PPP projects. The reason is due to high risks, changes in policies, laws, etc. In OECD country-level risk classification for Southeast Asian countries, Vietnam is at high risk (level 5), just followed by Laos (level 7) and Cambodia (level 6). Meanwhile, Singapore is at the lowest level – 0, Brunei and Malaysia are at 2, level 3 is the rest (including Indonesia, Philippines, and Thailand) **(OECD 2020)**.

In addition, when investing in expressways in the form of BOT, investors will also face many risk factors such as high construction investment costs, unstable traffic growth. It dues to the relatively high traffic toll on expressways, which vehicles must consider when choosing a traffic route.

Therefore, investors may face a long payback period. Or, this situation may result in worse, unlikely to recover capital. With BT projects, at present, the investment return through payment with state budget money is no longer allowed. The investment can only be returned by returning land use rights to implement other projects **(Teo, Pauline & Bridge, Adrian, 2016)**.

Second, the risk-sharing mechanism is not reasonable.

Risk allocation is a mandatory item specified in project proposals and feasibility studies. However, risks are not always properly distributed. According to the ADB representative, the risk allocation mechanism is not optimal, sometimes too much risk for the private sector and sometimes too much risk for the public sector. If there are too many risks for the private sector, it will be difficult for the private sector to access loans from banks. Most PPP projects are financed through bank loans. If there is a 1-2 years delay due to site clearance, a potentially profitable project will turn into a loss and delayed project. Even worse, if the delay lasts for five years, the business might encounter bankruptcy. There is no official standard or risk allocation framework for reference. Project owners should negotiate risk allocation on a case-by-case basis. This negotiation process takes a long time, and foreign investors often face difficulties in the implementation process **(Li et al., 2016)**.

The interviewed private sector representative commented that the absence of government guarantees in PPP projects was the main reason some PPP projects in the transport sector were delayed. Few foreign investors are interested in PPP projects without a government guarantee for a minimum revenue level. For example, some failed power plant projects where TKV (Vietnam National Coal and Mineral Industries Group – Vinacomin) could not raise finance from banks/financial institutions due to lack of government guarantee.

According to a representative of an international organization in Vietnam, the competent authorities have not yet clarified the risk-sharing mechanism that the Government guarantees a certain minimum level of revenue for investors and commits to compensate for unsatisfactory revenue. The current model shifts most of the risk to the private sector. Vietnam needs a transparent policy framework and fair risk allocation to attract investors and operators from the private sector. Similarly, an attractive contract structure with a clearly defined project scope and adequate assurance of expected financial returns helps to encourage private participation in PPP project transactions.

Third, challenges in the selection of investors implementing the project.

In terms of capital return, selecting investor also encounters some difficulties for competent state agencies. That is to arrange capital sources for the formulation of investment projects, preparation of bidding documents for investor selection, costs of organizing investor selection, etc. Besides, currently, preparing bidding documents for the selection of bids is required. Investors also do not have specific guidelines and criteria for selecting suitable investors with appropriate capacity, experience, and particular strengths to implement projects. Competent state agencies are also confused in formulating standards to select investors when making bidding documents.

When considering the financial capacity to select investors to implement projects, state management agencies often consider meeting the investor's equity. The total equity that the investor has (shown on the audited financial statements) must meet the equity capital allocated to the targeted projects. However, investors often only prepare equity capital for ongoing projects at that present. Very few investors prepare available equity sources for upcoming investment. The proof of equity, therefore, faces many obstacles.

In addition, the authority to carry out the verification, appraisal, and approval for the project implementation has many changes and has not been clearly defined. Therefore, it also causes some difficulties and confusion for investors and competent state agencies. It is even worse, especially with projects that have a long implementation time or handle forwarding.

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. Therefore, it can easily cause "stepping feet" for monitoring the quality of the works (by the supervision consultancy of the investor). In addition, the cost norms for organizing the implementation of state supervision have not been issued, causing difficulties when managing the implementation and performance.

Fourth, raising capital for PPP projects faces many difficulties.

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

Raising long-term capital is a challenge for both domestic investors and the state budget. To have long-term capital, in the condition that the stock market has not yet developed, private investors mainly have to borrow capital from commercial banks. However, Vietnamese commercial banks have limited long-term loans, especially with a tight monetary policy. If there are banks, they require stringent loan guarantees such as government guarantees. However, according to the Government's regulations, the State does not guarantee domestic, commercial loans of enterprises. Raising long-term capital, especially for private investors in transport infrastructure, is still limited.

Besides, domestic investors also have little experience investing, managing, and exploiting public-private partnership (PPP) projects. Also, they do not understand public-private partnership (PPP) investment. The risk has not been assessed, so implementation is still problematic. Meanwhile, foreign investors have not participated in these projects due to regulations not in line with international practices.

In addition, the lack of consistency and clarity of the legal corridor system is also a limitation for attracting non-budget investment capital for transport infrastructure projects.

Fifth, difficulties in returning investment capital by collecting traffic tolls in infrastructure.

The Vietnamese Government currently has no legal framework to regulate expressway tolls, toll regulations, and toll collection methods for inland waterways, maritime, aviation, and railways. However, Vietnam still calls investors to put money into those projects that are lacking capital. This situation also raises primary concern for investors because, without a specific solution, the project's economic efficiency is incalculable, especially if legal risks are still present. Currently, the fees for PPP projects, mainly in BOT, are bound by separate contracts, based on calculations and negotiations by the State with investors, but there is no standard framework. For investment enterprises, the fee is a critical indicator in the financial plan of an infrastructure project. Without it, there is no basis to calculate the following problems: the interest rate on capital, payback period, etc. Meanwhile, according to current regulations, although the fee is already in the contract, it is not binding for implementation. When the fee is adjusted, the enterprise must submit it to the Ministry of Finance or the Provincial People's Committee. However, whether approval or disapproval is beyond the control of the enterprise, therefore, it messes project's financial cycle.

Sixth, attracting PPP foreign investment is still low and ineffective.

In the past time, the PPP model has attracted a large number of investors. Still, the incentives, input price agreement, and parties' interests have not been clarified, and the project objectives are still general. Therefore, the rate of foreign investors learning then leaving is relatively high, such as the Clean water project in Ho Chi Minh City by Malaysian investors, American investors' coal-fired thermal power project, and a wind power development project. While the cost per kw/h of wind power is about 13 cents, the Government only accepts to buy 7 cents from investors, at most adding 1 cent to 8 cents. In the coming period, when Vietnam joins the ASEAN Economic Community and new-generation trade liberalization agreements such as FTAs with the EU and TPP are opening up prospects for promoting participatory PPPs. of foreign investors.

Finally, there are still some inadequacies for PPP legal framework.

Implementation instructions are issued too slowly. Some regulations are unclear, such as determining the investor's profit, specifying other financial criteria, and project payment conditions. Processes and procedures for compensation, site clearance, and resettlement still lack 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 BT paid by land faces many difficulties because the locality does not have a reserve of clean land. The call for investment done by BT cash has created an additional burden on the local budget.

No central PPP agents/organizations or authorities can explain priority projects' status. Also, no entities reduce project complexity since multiple licensing "doors" and multiple timelines are required for project development.

The government guarantee is unclear, 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.

There are conflicts between current legal documents, for example, Decree on BOT, General Investment Law, Law on Corporate Income Tax, etc. Also, there still exists an unclear correlation role of Vietnamese and International Laws in dispute resolution. The procurement procedures are complicated and convoluted, including the signing of negotiated contracts with preferred businesses. There still needs a fair and transparent competitive bidding system.

7. Solutions and Recommendations

There is still a lack of regulations related to the roles and responsibilities of competent state agencies and investors on risk-sharing in public-private partnership (PPP) projects.

PPP contracts should clearly define outputs and stipulate the payment to the project enterprise based on actual performance/outputs rather than focusing on inputs. This practice allows the private enterprise to be flexible and creative in implementing contractual requirements within budget while ensuring a minimum quality of public services. Performance-based contracts require identifying a set of Key Performance Indicators and specific objectives for monitoring by the competent SOE throughout project implementation **(Boyer, Eric., 2016)**. Contracting parties must allocate resources and arrange specialized human resources to monitor the project enterprise's monthly and quarterly performance results throughout the contract period. More detailed guidance on defining and preparing the contents of studies and contracts should be included in a relevant Decree or Circular by MPI.

PPPs' legal and regulatory framework should clearly define circumstances in which voluntary proposals are submitted and require investors to follow an open competitive bidding process. Criteria for evaluating and approving a voluntary proposal should include: (1) a voluntary proposal to introduce an innovative or effective service delivery mechanism for an essential public policy priority; and (2) the project does not create unfair competition in terms of service provision. Voluntary proposals must follow the project management and preparation processes applicable to mandatory project proposals **(World Bank Vietnam and Ernst and Young 2019)**. If proposals are selected for open competitive bidding, the regulatory framework should eliminate the 5% advantage for the original proponent. Adjustments to the management of voluntary project proposals should be reflected in the Law on Investment in the form of PPP and the decrees or guiding circulars of the MPI.

Financially, the PPP Investment Law should allow competent regulatory agencies to provide public financial support, including construction subsidies, utility payments, and guarantees. Many PPP projects such as health and environment are considered unprofitable even though they can support social goals, including projects targeting vulnerable groups. Meanwhile, institutional investors will only invest in a commercially viable PPP project, and banks will only loan a PPP project that is likely to be financially successful. The Government should study long-term financial support mechanisms over many years to improve these PPP projects' financial success and loanability. In addition to land allocation and tax exemption, the following options may be considered by the Government when providing financial support for PPP projects:

- Provide preferential loans, such as an investment stimulus fund in Ho Chi Minh City
- Provide output-based payments per unit/user
- Provide construction subsidies (experiences from Korea), or financial offsets (experiences from India and the Philippines)
- Guarantee for minimum demand or revenue, for example, the Turkish government guarantee for hospital bed occupancy at a minimum of 70%
- Government guarantees for financial obligations, for example, Indonesia's infrastructure guarantee fund or Korea's infrastructure credit guarantee fund;

8.Conclusion

The theory and practice of developing PPP forms show that this method is quite close to Vietnam's socialist-oriented market economy development philosophy. First of all, the goal is to put people at the center of development, enjoy the best services in transport infrastructure, energy, environment, health, education, and at the same time improve the competitiveness of the country's economy, creating a premise for private economic development and attracting resources from outside. Second, the whole people or public has still maintained ownership. The mobilization of private participation improves the efficiency of public services and the efficiency of resources without ownership conversion. In addition, the State plays a crucial role in leading the game, orienting development, expanding the development field, sharing risks to ensure harmony between the interests of the community and 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 stable private enterprises.

The reality of PPP project implementation shows that this is an ongoing implementation and adjustment and completion process. It is also a problem with many variables and impacts that require a high socio-political consensus, aiming for public services to serve the people's interests. Economically, this is also considered as having to implement the principles of the market entirely. There is competition, sharing of benefits between the State and enterprises, and complexity. It is because ownership still belongs to the State. Still, it must be profitable for businesses to be able to deploy. In the absence of publicity, transparency, and strict supervision of laws and institutions, this is an area where corruption and group interests are very likely to occur.

The prerequisites for a successful PPP are compliance with the principles of market competition, 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.

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