Public private partnerships in Vietnam
Proposed changes and key issues in the draft PPP Decree
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Public private partnerships

• Decree 15/2015/ND-CP is one of key legal authorities on public-private partnerships in Vietnam infrastructure

• However, various bankability issues remain unaddressed

• a draft PPP Decree was released on 1 August 2017 by the Government

• this draft legislation once finalised and promulgated will be a new PPP Decree to replace Decree 15/2015/ND-CP
Concession agreement

• Legally mandated forms of contract
  ✓ Build - Operate - Transfer (BOT)
  ✓ Build - Transfer - Operate (BTO)
  ✓ Build - Transfer (BT)
  ✓ Build - Own - Operate (BOO)
  ✓ Build - Transfer - Lease (BTL)
  ✓ Build - Lease - Transfer (BLT)
  ✓ Operate - Manage (O&M)

• NEW: the draft PPP Decree expressly requires relevant authorised State agencies (ASA) in relevant industries to work with MPI to prepare a model form of concession agreement
Concession agreement

ASA and sponsors must publish a project summary upon execution of a concession agreement by the parties (NEW!!!)

Aim to promote transparency and efficiency on delivery of large-scale infrastructure projects in Vietnam

- Project summary includes (amongst others):
  - project name, date of execution, particulars of ASA and sponsors, total project investment, Government participation, sponsors’ debt and equity finance
  - project location, land acquisition, type of concession, project term, pricing (?), concession conditions relevant to project revenue
Selection of sponsor

- scope of investment sectors and classification of projects are largely the same
- selection of sponsors for a Vietnam PPP may take one of the following forms
  - open tender
  - direct appointment
  - selection of sponsors in exceptional circumstances in accordance with applicable PPP procurement rules (NEW!!! but lack of substantive guidance on applicable pre-conditions)
Statutory procedural steps

Key Project Timelines

(1) Selection of Sponsors

(2) Execution of Investment Agreement

(3) Incorporation of Project Company

(4) Execution of Concession Agreement
Viability gap funding

• Minimum equity of sponsors
  ✓ 15% of total investment capital for projects of national significance and projects “Group A”
  ✓ 20% of total investment capital for projects “Group B” and “Group C”

• Government participation (VGF) includes
  ✓ Government contributions (Capex)
  ✓ Availability payments for BTL and BLT models
  ✓ Land areas, public assets and structures for BT model
  ✓ Government funds to be used for land clearance, relocation and compensation, construction of ancillary facilities
Other bankability issues

• complex and lengthy master planning processes in multiple industries

• lack of a robust and consistent risk allocation framework to provide greater certainty on certain key risks that should be retained by the Government and the private sector

• limited scope of available sovereign guarantees, including inadequate Government support on foreign currency availability and conversion

• statutory restriction on mortgage of land use rights in favour of international lenders, complex land acquisition process and compensation

• payment ability and creditworthiness of Vietnam project counterparties
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