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VIETNAM PUBLIC-PRIVATE PARTNERSHIP IMPLEMENTATION SUPPORT FINAL REPORT

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Back Dang Toll Bridge BOT Project
Photo: vietnamnet.vn

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TABLE OF CONTENTS

Activity Overview	2
Output 1: Developing and Adopting a New Regulatory Framework	3
Output 2: Building Capacity and Partnerships	5
Output 3: Preparing for PPP Implementation	7
Lessons Learned	8
Recommendations	9
Annex I: Project Outputs	10
• Review and Comments on PPP Law and Regulation	
• Reference Materials and Studies	
• Workshops	
• LEAP III Team	



Van Don International Airport BOT Project
Photo: en.wikipedia.org

ACTIVITY OVERVIEW

To maintain current growth levels and achieve sustainable growth standards, Vietnam needs to double investment in infrastructure to US\$20 billion annually by 2022.

Given current public budget constraints, it is estimated that over 50 percent of this required funding will need to come from the private sector. The Government of Vietnam (GVN) has sought to address this gap by mobilizing private sector participation in infrastructure via Public Private Partnerships (PPPs). Since 2010 it has raised significant private capital through PPPs to upgrade its infrastructure and public service delivery. As of 2021, according to the Ministry of Planning and Investment (MPI), 336 infrastructure projects have been implemented as PPPs (US\$70 billion from private finance), of which 220 were in transportation, 18 in power, and 18 in water supply, wastewater treatment, and the environment. Due to current budget constraints and the public debt ceiling, it is now even more important to attract private investment through PPPs. There have, however, been some challenges implementing PPPs, most notably weaknesses in the legal and institutional framework that have encouraged non-transparent and uncompetitive procurement processes. Additionally, inconsistencies between Vietnamese laws have led to the failure of some PPP projects.

To strengthen and transform the nature of PPPs, the GVN embarked on a new PPP Law that aims to change the rules, systems, and processes for PPPs in Vietnam to attract new PPP players and investments (both domestic and foreign). The USAID Learning, Evaluation, and Analysis Project (LEAP III), implemented by Integra LLC, was engaged USAID/Vietnam to support this effort through a series of activities involving three primary stakeholders: The Ministry of Planning and Investment (MPI), the National Assembly (NA), and the Vietnam Chamber of Commerce and Industry (VCCI).

The activity substantively moved the needle forward in terms of PPPs in Vietnam and had three primary outputs:

1. Developing and adopting the new PPP Law and implementing regulations;
2. Building capacity for the National PPP Committee and its partnerships with policy makers and investors; and
3. Piloting PPP implementation at the provincial level. This report will review the major achievements across these outputs, as well as provide lessons learned and recommendations going forward.



The activity was implemented from March 2019 to January 2021 in three distinct but overlapping phases:

PHASE 1: The initial phase was designed to support the building blocks for the PPP Law in line with international standards and best practices. Technical assistance was provided to MPI, the National Assembly (NA), and the Vietnam Chamber of Commerce and Industry (VCCI) throughout the drafting process. The support included identifying and engaging technical experts, facilitating consultation workshops, and authoring a series of case studies on Vietnam's PPP projects.

PHASE 2: The intent of the second phase was to mobilize key stakeholders, with a particular focus on Vietnamese and international investors, to ensure the PPP Law contained the necessary provisions to drive responsible and sustainable investments.

PHASE 3: Complementing the activities of Phase II, the final phase focused exclusively on activities deemed most critical to implementing the PPP Law, including developing regulations, providing capacity building for implementation, and identifying a project pipeline.

OUTPUT I: DEVELOPING AND ADOPTING A NEW REGULATORY FRAMEWORK

The USAID LEAP III team approached developing the PPP regulatory framework from three perspectives including:

1. Working directly with policy makers (i.e., with MPI and NA), providing technical input, comments, and recommendations;
2. Building partnerships with the private sector and encouraging them to share their views, experience, and comments; and
3. Educating the press to enable them to report on the topic more intelligently and build broad support for positive changes.

This approach required USAID LEAP III to work with multiple partners and be flexible to respond to the evolving needs of stakeholders. This demand-driven, result-oriented programming was possible due to a very good understanding of the Vietnamese market, strong partnerships with the counterparts, and a practical, flexible workplan that enabled the optimal use of resources to produce the greatest development return. The approach helped to address the challenges with the PPP Law and build the right partnership between policy makers and the business community, who will continue to advocate for regulatory improvements in PPP well into the future. This continued advocacy is critical, as the regulatory framework for PPP remains far from perfect and GVN will need to revisit the PPP Law and its regulations to address deficiencies as they arise.



Online workshop on PPP Law with businesses.

USAID LEAP III provided the following assistance to MPI, NA, and VCCI in developing the PPP Law:

1. Provided MPI with several rounds of technical comments on the draft PPP Law.
2. Supported MPI to conduct a series of events on the PPP Law, including a consultation with Professor Akash Deep, a global authority on PPPs and faculty chair of the Infrastructure in a Market Economy Executive Program at Harvard University.
3. Supported MPI to develop a series of case studies on PPP and other forms of private participation in infrastructures and public services, also known as “socialization” in Vietnam.
4. Provided the NA with seven technical briefs on PPP, risk sharing and government guarantee, build-transfer contracts, sectors open to PPPs, PPP models in Vietnam, the role of state audit in PPP, and the role of state capital in PPP.
5. Supported VCCI’s PPP Committee to complete a “Green Book” consolidating the comments and views of over 20 investors, financiers, and advisors on the draft PPP Law, that was used to advocate for changes in the draft PPP Law.
6. Supported VCCI’s PPP Committee to conduct a series of round table discussions on the draft PPP Law to enable investors, financiers, and advisors to engage with policy makers and provide input to the draft PPP Law.
7. Supported VCCI’s PPP Committee to build a strong coalition with like-minded business groups who provided inputs and comments on the draft PPP Law and its implementing regulations.
8. Supported MPI and VCCI in outreach activities that supported the development of the PPP Law.
9. Provided comments on draft Decrees including Implementing PPP Law and Financing Issues in PPP.

As a result of COVID-19, several consultation events had to be organized online. In addition, USAID LEAP III was not able to support domestic study missions for the NA to selected provinces in Vietnam and international study missions to Turkey and Indonesia.

With assistance from USAID LEAP III, Vietnam adopted the new PPP Law in June 2020. Major improvements via the PPP Law include requiring competitive bidding for selecting investors, and transitioning to performance-based PPP, based on key performance indicators. As the Vice Chairman Son of the Economic Committee commented:

“USAID provided high quality and responsive technical assistance to the National Assembly’s Economic Committee in reviewing the PPP Law. Some of your proposals such as the one on the new approach to government guarantees need more study and exposure to international experiences before we can fully understand and include them in the PPP Law.”

This being the first law on PPP, it is inevitably not perfect. Despite the successes, the PPP Law fails to address some critical challenges including, but not limited to:

1. Rigid and limited government guarantees;
2. Inadequate financing to validate business viability gap funding; and
3. A weak institutional framework and capabilities to prepare, compete, and implement PPPs.

The PPP Law also requires that Vietnamese Law be the governing law of PPP contracts, which will likely limit international investors. A large international financier commented that:

“The draft law prevents the bad guys from doing bad things, but it also prevents and discourages good investors from investing in PPP in Vietnam.”



Duong River Surface Water Treatment Plant
Photo: vir.com.vn

OUTPUT 2: BUILDING CAPACITY AND PARTNERSHIPS

With limited time and resources, USAID LEAP III focused on building the capacity of the new PPP Committee under the VCCI to both raise the voice of investors and financiers and to work more effectively with policy makers on developing the PPP regulatory framework and good practices. USAID LEAP III also worked on raising the awareness of the NA regarding current practices of PPP in Vietnam and international best practices.

The VCCI PPP Committee was established in 2018 under the National Council for Sustainable Development and Competitiveness Improvement by the Prime Minister. The Committee on PPPs is charged with 1) developing policies and PPP projects for sustainable development and long-term national competitiveness enhancement; 2) mobilizing both domestic and foreign resources; and 3) encouraging businesses to present ideas and build PPP models and projects in a sustainable way. The Chairman of the VCCI serves as the Chairman of the National Committee on PPPs, providing the Committee with an ideal role in mobilizing the voice of the private sector, both domestically and internationally.

The PPP Committee, with USAID LEAP III technical assistance, steadily formed partnerships with key business associations and institutions, including the Vietnam Association of Road System Builders (VARSI), Amcham, Eurocham, Japanese Business Group, Korean Business Group, Australian Business Group, British Business Group, and Singapore Business Group. The PPP Committee coordinated the input from these groups into the PPP Law and implementing regulations. With USAID LEAP III support, VCCI and VARSI entered into a Memorandum of Understanding (MOU), and all other business groups agreed to work with the PPP Committee. Their collaboration on inputs to the PPP Law and the Decrees deepened their overall relationship and partnership.

USAID LEAP III provided the following support to the PPP Committee:

1. Supported the development of an Action Plan for the PPP Committee.
2. Engaged the business associations and policy makers and included them in the work of the Committee on the PPP Law and its implementing regulations.
3. Assigned a consultant to work exclusively on outreach and capacity building for the PPP Committee for approximately one year, including developing a database of active members.
4. Provided technical input to a study by the PPP Committee regarding the perception of the business community on PPP and the new PPP Law, which included 600 business participants nationwide.
5. Provided a sustainability plan to the Committee at the end of the activity.



Discussion on business perceptions of PPPs by VCCI

USAID LEAP III's approach to building the capacity of the PPP Committee was to support where necessary and where there was a strong desire to do so from the Committee. In all the activities, the PPP Committee was always in the lead and USAID LEAP III only provided partial funding and support. VCCI appointed a General Director to be the Executive Director of the PPP Committee and invested resources and funding to support the operations of the PPP Committee. The development of the PPP network and capacity by the Committee was very much a process of learning-by-doing, leveraging, and innovating. In response to the assistance of USAID, Chairman Loc of VCCI and the PPP Committee commented that:

“USAID technical assistance to VCCI and the PPP Committee was useful and effective. With the assistance from USAID, the Committee has extended its partnership to a number of business associations. We look forward to furthering our partnership with USAID in this important area.”

Though the PPP Committee has made significant progress, much remains to be done. PPP policy advocacy is on-going, and the PPP Committee will need to work with the business community on further improving the current regulatory framework, including future revisions to the current PPP Law. Good practices have yet to be identified and promoted by the PPP Committee. Implementation capability in local and central governments remains weak and needs significant improvement. The PPP Committee needs to build up its technical expertise in PPP and appoint a full time secretariate to support a larger portfolio of activities. The PPP Committee could be a good candidate for donor assistance to advance the PPP program in Vietnam, leveraging the network and partnerships that have been created through the USAID LEAP III investment.



Thang Long Thermal Power Plant in Quang Ninh Province | Photo: baodatu.vn

OUTPUT 3: PREPARING FOR PPP IMPLEMENTATION

With the new PPP Law in place, Vietnam expects to create a strong regime for PPPs. A successful PPP program will depend, in large part, on executing the new PPP Law in a way that attracts new investment with transparency, competition, value for money, and people in mind.

The need to support implementation and capacity development is enormous. With limited time and resources, USAID LEAP III worked with Ho Chi Minh City and Danang provincial government on a pilot project to develop a pipeline of potential projects at the local level in Vietnam. The team was able to work with the local government and investors on developing and prioritizing a pipeline of potential projects for PPPs in Ho Chi Minh City. In Danang, the LEAP III efforts were primarily with investors, identifying and rating potential projects, as the team was not able to work with the local Government due to a lack of interest.

In addition to supporting the pilot implementation, USAID LEAP III completed studies into future technical assistance in PPPs and provided partial assistance to the PPP Committee to assess the potential and approach to opening more public services to private investment and delivery. Below is the list of activities USAID LEAP III supported in this area:

1. Worked with local government and investors on identifying and rating potential PPP projects in Ho Chi Minh City and Da Nang (see text box at the right);
2. Supported VCCI to conduct a study into how to open more public services to private investment and participation; and
3. Provided two papers to support future USAID programming in PPP including: 1) a political economy and business enabling study in PPP that provided a comprehensive review of the PPP Law and its implementing capacity and challenges; and 2) project development facility/fund that reviewed the feasibility and options for supporting a project development facility for PPP in Vietnam.

Promising possible projects for USAID to consider:

The LEAP III team prepared an initial list of more than 45 projects with potentially more than \$875 million in investment serving a wide range of municipal needs. Hospitals, clinics, university dorms, affordable housing, and elder care facilities are noted. In alternative energy, wind, wave, solar, and waste to energy plants are under consideration, as are investments in bike sharing, energy efficiency, electric car charging stations, and smart cities technology. Environmental infrastructure projects figure largely, including solid waste, recycling, composting, sewage, and water treatment. Tramways, water taxis, canal renewal, parks, and bridges also hold promise. The list includes projects that would clearly be included PPPs under the new Law, and many that might be excluded PPPs, whether because of their size, or because they require no state capital and are not public procurements. Together, they offer a promise for healthier, fairer, more livable, and sustainable cities.



Survey of PPP Pilot in
Ho Chi Minh City

LESSONS LEARNED

There were several key lessons learned during the implementation of these activities:

1. The use of a flexible buy-in mechanism, such as USAID LEAP III, enabled USAID/Vietnam to design and deploy the activity effectively and quickly to meet the need of the host country. All team members worked part-time and were available when needed to provide necessary input and manage the activity efficiently. Logistical and administrative support was kept to a minimum and no permanent office was required. The activity was, therefore, very cost-effective related to its large impact.
2. The approach to policy advocacy where USAID LEAP III facilitated the collaboration and partnership between policy makers and business community to enable a transparent exchange of ideas proved highly effective. The approach generated fast feedback on the law and built the lasting foundations for collaboration. In the face of COVID-19, the team built various messaging groups to enable real time interaction and input by the team to the law in response to request from policy makers. The engagement of the press during the development and finalization of the PPP Law was also very effective in mobilizing public support.
3. Including the voice of the business community in PPP is crucial, but the mechanisms to effectively coordinate and raise this voice need to be built. The PPP Committee is an example of where targeted technical assistance can make meaningful input in raising the voice.
4. Some local governments may not be interested in short-term pilot work, especially if they are unable to see what the pilot work can lead to down the road. This was the case with Danang. Therefore, it will be vital for USAID and other partners to work with willing provinces, such as Ho Chi Minh City, to show successful models for replication.



Halong-van don Highway
Photo: Chinhphu.Vn

RECOMMENDATIONS

Going forward, the need for PPP will only become greater as gross domestic product (GDP) and investment (including foreign direct investment) continue to grow and fuel the need for more and better infrastructure and public services. The PPP Law is a good start; however, it does not cover all possible PPP transaction types. The team recommends that USAID continue to work with PPPs, broadly defined, to develop a long-term activity of support for quality PPP investments.

1. Facilitating and Funding Deals

Continue to promote private investment in infrastructure and public services through various forms of PPP. Support for PPP should be approached broadly to include both PPP as defined in the PPP Law of Vietnam, as well as other types of PPPs that are needed to attract investor interest but are not defined as PPP in Vietnam. USAID can position itself as a focal point to bring viable PPP deals to fruition in its selected provinces and sectors. As noted above, the LEAP III pilot exercise used a priority toolkit to identify 45 projects with a potential investment value of more than \$875 million. Many could be viable if prepared and structured soundly. This first list includes various project types, including environmental, transportation, and digital PPPs. Various urban environmental infrastructure projects emerged as a promising area for potential sectoral concentration, especially in waste treatment. Environmental sustainability is both a GVN goal under its Economic Development Policy and a USAID Country Development Cooperation Strategy (CDCS) objective.

2. Work on both policy and capacity to ensure transparent competition that generates deal flow, especially at the local level

Enabling innovative approaches will build the case for changes in related legislation including the PPP Law and an array of other rules governing private investment in infrastructure and public services. Many GVN officials have already received training in PPPs, especially at the MPI central offices and in the HCMC DPI office. Other potential counterparts have much less experience with PPPs, with capacity in law and financial analysis most lacking. If the GVN continues to try to treat PPPs like publicly funded projects, instead of recognizing why and how they differ, this mindset will continue to promote unviable projects and lead to further failure to attract serious investors. Training for key stakeholders on the PPP project lifecycle (project identification, appraisal, procurement, and contract monitoring) will help them understand the deep differences between fully publicly financed infrastructure and blended finance PPPs.

3. Mobilize capital for targeted PPPs

USAID should explore new ways of financing PPP and enable investors to have access to broader and more diverse streams of financing—both commercial and development—to take advantage of blended finance, bonds, and the stock market. USAID can open doors to the U.S. Development Finance Corporation, Catalyze, INVEST, and other programs with investable funds or provide access to them and seek blended finance opportunities to support meaningful PPPs.



ANNEX I: PROJECT OUTPUTS

Review and Comments on PPP Law and Regulation

Click "»" bullets for detail

- » Article by Article Comment on draft PPP Law to MPI
- » Overall Comment on the PPP Law to the NA
- » USAID Letter to NA on Government Guarantee
- » Green Book: "Private Sector Perspectives on Public-Private Partnerships in Vietnam"
- » Recommendations of business groups on the Draft PPP Law
- » Comment by Professor Tu Anh on Draft PPP Law
- » Comment on draft PPP Decree
- » Draft PPP financing Decree

Reference Materials and Studies

Click "»" bullets for detail

- » PPP 101
- » PPP Case Studies
- » Briefing Paper One: Build-Transfer Contracts
- » Briefing Paper Two: Sectors Eligible for PPPs in Vietnam
- » Briefing Paper Three: Revenue Risk Sharing Mechanisms
- » Briefing Paper Four: PPP Models in Vietnam
- » Briefing Paper Five: PPP State Audits
- » Briefing Paper Six: The Role of State Capital in PPPs
- » Vietnam Project Development Facility – Concept Note
- » Case Study 1 – Indonesia: Completing the Trans-Java Highway
- » Case Study 2 – India: New Delhi Water and Power
- » Case Study 3 – Poland: Poland's A2 Motorway
- » Case Study 4 – United Kingdom: The British Industry: The Evolution of Price-Cap Regulation
- » Case Study 5 – Australia: Partnerships Victoria: The Public Sector Comparator
- » Economic and Social Council (UN): "Putting the Guiding Principles on People-first Public Private Partnerships into practice" (2019)
- » Towards transformation: Role of private enterprises in providing public services in Vietnam – Conformity Assessment Service" (VCCI, 2020)
- » PPP Pipeline and Project Development Toolkit
- Political Economy and Enabling Environment Assessment of PPP in Vietnam (proprietary)

Workshops

- Online consultation on the Draft PPP Law with foreign investors (Hanoi, May 13, 2020)
- Online consultation on risk sharing in the draft PPP Law (Hanoi, April 16, 2020)
- Online consultation on financing PPP (Hanoi, April 28, 2020)
- Workshop on PPP Law (Hanoi, December 18, 2019)
- Offline Workshop on Draft PPP Law (2019)

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