

# Public–Private Partnerships (PPP) Policy and Practice in Lao PDR

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**Abstract.** *In recent years the movement and development of the public-private partnership (PPP) have become increasingly popular for the government development projects. The infrastructure development projects are of particular. Laos has no exception. The role of the private sector has been gradually recognized since Lao PDR began to implement a market-oriented economy in 1986. The country’s efforts to modernize and industrialize the economy by 2020 and integrate itself into a single market, so called “AEC” or ASEAN Economic Community in 2015 means that Lao PDR will need a greater role of the private sector to play in the national development, especially the infrastructure industry. As a result, there has been development and emergence in recent years of the involvement of the private sector in public infrastructure development projects taking place in various channels and forms and through case-by-case negotiation. It has been observed that the involvement of the private sector in those projects is a myth due to a lack of specifically and clearly defined legal instruments to facilitate the project approval and operations. Lacking specific and clear legal instruments and tools creates an incomplete practice pertaining to PPP and that the government cannot make best use of the existence of the private sector today.*

## Keywords:

public-private partnerships, infrastructure, legal framework

## 1. Introduction

Lao PDR (Lao People’s Democratic Republic) is currently in a transitional economy from a centrally planned into a market oriented system. The New Economic Mechanism (NEM) has been regarded as a tool of economic reforms since 1986. Following the reforms, the government formalized the private sector and gradually relaxed restrictions on its role in the economy by allowing it to play a bigger role in the economy. Today, the private sector becomes another important development partner in the national socioeconomic development [1].

In spite of the remarkable economic growth and improved livelihoods of the people, Lao PDR’s efforts to escape from the least developed country status still remain

great challenges. It is finding it difficult to achieve its Millennium Development Goals and a mission to become a modernized and industrialized economy by 2020 as delivery of basic services is inadequate hindering poverty reduction efforts and the state budget is generally limited and thus has to be dependent more heavily to donors’ monies which account for more than seventy percent of the public investment in social and physical infrastructure development projects across the country.

In addition, the services of existing projects such as health, transportation and education are unreliable and insufficient of quality. The very reason and complaint, often heard and reported, are lack of funds. The already developed or built public service delivery particularly the physical infrastructure is said to be done with poor planning and execution, misspending of funds from the start until the completion of the projects—making the project costs unreasonably high and an unacceptable waste of the government resources which are already and severely limited in the government.

For the past decade the government of Lao PDR has made efforts to mobilize resources from outside—the private capital, in addition to donors’ funding, to help fund and even develop basic public infrastructure projects on its behalf by improving and developing existing legal framework and services to attract the investment from the private sector, including foreign investments. Here comes the development of the public-private partnership initiative which today does not have a standard form with clear legal support. Donors like the World Bank or Asian Development Bank encourage the government to develop its relationship with the private sector as it can provide solutions to the public services difficulties and deficit.

Today no consensus is made when it comes to an international or universal definition of the public-private partnership (PPP). Thus, it has several forms, depending on situations in different countries [2]. For instance, PPP is defined in US as a contractual arrangement between the public and private sector bodies; the private sector body is a notfor-profit organization or developer where resources and risks are shared for purposes of delivery of public services and infrastructure. In Canada, it is defined as a cooperative venture between the public and private sectors

built on expertise of each partner; and Hong Kong defines it as an arrangement where the public and private sector players both bring their complementary skills to a project.

There is, however, a broad term pertaining to PPP. The World Bank puts it as an arrangement with agreed and shared objectives which is made between the public and private sectors for delivery of public infrastructure; the private sector is granted to do the job and provide services falling under the responsibilities of the public sector. It also adds that service contracts or turnkey construction contracts are excluded from PPP as they are considered as public procurement projects or utility privatization. According to the World Bank, the PPP arrangement can be made in form of “management and leases, concession, build operate-transfer and design-build-operate, and joint venture or partial divestiture of public assets. It is up to an individual country to apply a form, however. But what constitutes the so called PPP is the Private Finance Initiative. PFI initially developed in Australia and UK is regarded as a way of PPP by funding the infrastructure development projects with the private money.

The countries in the region are taking measures to ensure the private sector’s participation in the delivery of public services and infrastructure projects. For instance, Vietnam is in a process of amendments to its existing PPP legislations to facilitate and attract international investments [3]. Thailand enacted an Act on Private Investment in State Undertaking in April 2013 to, for instance, streamline project approval processes thus being a new push by the government to encourage the participation of the private sector in the delivery of public services and infrastructure. This act is regarded as a key policy development that would help facilitate planned mega projects such as railways which the Thailand government is seeking to find loans worth over 2 trillion Thai Baht and that would raise confidence in the country’s infrastructure industry [4]-[5]. Under the abovementioned Act, a National PPP Committee would be established to deal with project approval, drafting relevant rules and regulations out of the Act and coordinate with concerned agencies.

However, research and development on PPP are generally absent to provide policy-makers with pros and cons about PPP and a suitable form and approach to be applied in Lao PDR. A majority of infrastructure development projects approved so far were in accordance with individual negotiation between the public and private sectors with a case-by-case agreement.

This paper preliminarily discusses the development of PPP in public infrastructure in Lao PDR by reviewing the economic characteristics and relevant legal instruments being implemented in association with the private sector involvement in the infrastructure development. This paper is constructed with three main sections—introduction, discussions and conclusion. The paper is an introductory paper the author is currently doing research for his doctoral degree. The data obtained in this study is based on the

experience of the author working on in the infrastructure development and the review of the secondary data from reports and research papers.

## 2. The Development and Practices of PPP in Lao PDR

This section describes the development of the public-private partnership in Lao PDR. To begin with it is important to discuss an early stage of the national economic development from 1970s to find indicative evidence of the PPP development. Lao PDR became a republic state in 1975 and has been ruled by the Lao People’s Revolutionary Party until today. The ruling LPRP decides the policies and directions of the national development.

### 2.1 From a Centrally Planned to a Market Oriented Economy

The very clue that may suggest an emergence of the private sector developer is from the fact that the government decided to abandon a centrally planned economy in 1986 and replaced it with a socialist market-oriented economy. During the centrally planned economy, the vast majority of infrastructure development projects and services relied merely on the public sector financing through different channels—foreign assistance. The government determined, prioritized, and implemented policies to improve infrastructure delivery and services through executive “orders” made case-by-case; during the centrally planned economy, the constitution and laws did not exist. The government thus managed its ongoing projects on its own and the private sector was not part of the economic development and thus being neither encouraged nor recognized of its existence during the centrally planned economy. In other words, the private sector’s involvement was out of question at this stage of the national development as it represented capitalism and was in an opposite direction to the government’s determination to socialism, something it has aimed to achieve.

Following the economic reforms in 1986, a number of laws were promulgated. Of significance were laws on enterprise<sup>1</sup>, private investment promotion, and foreign investment promotion that paved ways to a return of the private sector and foreign investments. These laws were revised a few times in response to the changing situation. Overall, with them being put in place, a multi-sectoral economy emerged and the private sector was and has been encouraged to play a role little by little in the public infrastructure development and delivery through the public procurement and financing.

### 2.2 Existing Legal Framework

The key legal references for the private sector’s involvement in the public infrastructure development and

service projects are Law on Investment Promotion (2009) and Decree on the Implementation of Investment Promotion Law (2011).<sup>3</sup> There are also other generally related laws such as Enterprise Law (2005), Public Investment Law (2009), and other regulations like Regulation on Bidding. To deal with specific sectors there are sector specific laws such as construction law, energy law, water, telecommunication, and so forth.

The law on investment promotion, applicable to both domestic and foreign investments, groups the investments into three types, namely general business, concession business, and activities for the development of special economic zones and specific economic zones. The last two types are widely seen involved in large-sized projects: public infrastructure, industrial parks, and energy and mining. It has been observed that those largesized infrastructure projects invested and developed by the private sector that uses public resources in the country are generally implemented in form of a “concession business” with agreed and shared objectives between the public sector and the private sector.

According to the law on investment promotion, a “concession business” is defined as an investment activity authorized by the government to utilize ownership and other rights of the government in conformity with regulations, for the purpose of developing and conducting business operation; these include rights on land concession, minerals, electric power, airlines, telecommunication, insurance and financial institutions. Another type of business that possibly associates the private sector’s involvement and partnership with the public sector is a private investment in the development of special economic zones and specific economic zones. The government allows a private sector developer to develop an industrial part in Savan-Seno Special Economic Zone. A concession period is also applied.

The department of planning and investment under the ministry of planning and investment is in charge of reviewing and appraising a concession business application in cooperation with a concerned line ministry. A one-stop service facility was established in the ministry of planning and investment to facilitate the process. In other words, this department acts as advisory on how to start up a new business. It also leads the drafting of agreements in cooperation with concerned public sectors. Case-by-case negotiation is usually done between the responsible public authority and the private sector developer.

There is another popular, but negatively criticized, investment which the private sector enters into an agreement with the public sector to develop public infrastructure—roads, buildings, and so forth. It is an “advance investment” with the private capital.

## 2.3 Emerging Public-Private Partnership Movement

Although the role of private sector developers has been recognized since the economic reforms taking place in 1986, one may say that there is no standard format of PPP in Lao PDR that specifically deals with PPP projects. In the past there were very few samples that represented the case of real PPP. To the best knowledge of the author the Tha Ngon Bridge construction project in Vientiane Capital was made PPP. The bridge was invested, built, and purposefully by the private sector developer. For some reasons the developer decided to sell it the government who borrowed the money from one of its state banks. The government assigned the local administration authority to collect toll fees from the users of the bridge and repay the bank which a few years ago took over the management of the bridge and now collects fees by itself.

The private sector’s involvement in public infrastructure development and service delivery has been less known of allowing the developer to manage the public goods on its behalf. The reasons behind this are that the private sector, particularly local developers, had limited funds for large infrastructure projects, that the government still relied mainly on aid monies for such projects whereby private sector developers—local or foreign—was contracted to do the work and hand it over, once completed, to the government for management. In order words, the developer designs, builds and transfers; and that lastly it was political will of which the government considered that the role of the public sector was and is more important when it comes to the management of public goods and service delivery. In recent years PPP has become a hot topic; international organizations—World Bank and Asian Development Bank—set preconditions in project designs to include PPP in some of the project activities. PPP is seen not only a resource mobilization of the private capital but also other resources of technical and managerial knowledge and skills for each partner. The most recent development on PPP, being perhaps the real PPP of its kind, is a joint cooperation between the government and the Public-Private Infrastructure Advisory Facility (PPIAF) through the World Bank carried out a feasibility study into a “Pilot” Public-Private Partnership road building scheme to improve infrastructure in Lao PDR. The survey investigated the possibility of highway construction covering a length of 150KM of Route 13 North—Vientiane to Phonhong of Vientiane province and Route 13 South— Vientiane Capital to Thaphabath District of Borikhamxay province. The study showed that more than 90 percent of people were willing to pay money to drive on the road, which probably suggested that the cost of using the service might be borne from the users of the highway— via toll payment.<sup>1</sup> The expected result is PPP for efficient infrastructure development framework.

The changing model of working together between the public and private sectors is being looked into to determine an appropriate approach of cooperation as partners—public and private actors. Such development is supported by the fact that the government will have been encountering increasingly financial difficulties to fund public infrastructure projects so that the country can achieve the Millennium Development Goals in 2020 and catch up with regional integration—AEC (Asean Economic Community) in 2015. The limited state budget to be invested in public infrastructure projects has prompted the private sector involvement as a way to realize the goals. There are, however, concerns about the level of public debt due to rapid growing infrastructure development and improvement whereby the project costs are unacceptably high.

### 3. Conclusions

The assessment of its contextual environment— the economic characteristics and legal framework suggests that the development of PPP in Lao PDR is at an early stage. The management of to-be-like PPP projects is in accordance with the law on investment promotion.

The role of the private sector is and will be important and necessary today in the infrastructure development and improvement. Being successful PPP projects requires specific standard instruments to deal with PPP and thus will be a solution to unapproved development projects largely ongoing in the country today.

### 4. Acknowledgements

1. This Business Law was promulgated in 1994, and amended in 2005 and renamed to the Enterprise Law.

2. Laos' 1994 Business Law (Article 4) categorized enterprises in four types: private enterprises, state-owned enterprises, collective enterprises, and mixed enterprises (namely, state-owned enterprises in joint venture with domestic or foreign parties and private enterprises in joint venture with domestic or foreign parties).

3. Law on Investment Promotion was enacted in 2009 by merging two laws on domestic and foreign investment promotion. Those two laws were Law on Domestic Investment Promotion (enacted in 1994 and amended in 2004) and Law on Foreign Investment Promotion (enacted in 1995 and amended in 2005).

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