

New law puts public-private partnerships on solid ground

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There was much fanfare last year about the enactment of the Private Investment in State Undertaking Act of 2013. Many commentators forecast an era of renewed vigour for public-private partnerships (PPPs) in Thailand.

In reality, the Act made only incremental changes relative to the older Public Participation in State Undertaking Act of 1992, at least in terms of approval procedures. However, it did set out a much stronger framework for comprehensive planning and quality of public-private ventures. This was evident in sections calling for a PPP Policy Committee, a PPP Fund and a PPP Strategic Plan as well as regulations on the use of experts and consultants.

The PPP Policy Committee in particular has broad authority, from preparing the PPP Strategic Plan for cabinet approval to approving projects, proposing measures to support PPPs, considering approval of no-bid selection processes and issuing a variety of regulatory notifications.

The PPP Strategic Plan will be the main driver of PPP policy, identifying sectors appropriate for PPPs, setting priorities, identifying areas where investment is urgent and setting targets and time frames. A new plan is to be produced every five years, with evaluations in the interim.

To ensure the plan reflects public needs, the PPP Policy Committee must hold hearings to obtain input from state agencies and members of the public. Prior to each hearing, the State Enterprise Policy Office (Sepo), as the secretariat, will prepare a framework setting out the draft strategic plan, goals, target audience and other details for the approval of the committee. This will help it to produce an effective PPP Strategic Plan for submission to the cabinet.

The PPP Fund, meanwhile, is envisaged to be used for developing the strategic plan, hiring consultants and helping state agencies to develop PPPs consistent with the plan. The money will come from state budget appropriations as well as fees charged to bidders. A PPP Fund Committee, separate from the policy panel, set out rules for the fund's operation and expenditure earlier this year.

The new law also sets out clearer guidelines for the use of experts and consultants. By law, a state agency pursuing a PPP must appoint a selection committee to address tendering and a supervisory committee to handle oversight. Each is required to include some experts with knowledge, expertise and experience that would be directly beneficial to consideration or oversight of a project. The necessary regulations having been promulgated, Sepo has already begun compiling a list of approved experts.

As for consultants, the law envisages they will have various roles. At the very least, government agencies are required to hire consultants to produce reports about particular projects they wish to pursue. In addition, consultants can help to prepare tendering documents, analyse and propose solutions to managing risks, analyse and propose solutions to implementation problems and/or advise on contract amendments.

Given the important role of consultants, the law requires the PPP Policy Committee to promulgate regulations on their qualifications. These regulations were promulgated early this year and address both individual consultants and firms. Among the requirements, a consultant must have at least three years' experience and consulted on at least three projects, although these requirements can be reduced in the event of necessity with prescribed approvals.

Among the prohibited characteristics, the regulations exclude those who have specified conflicts of interest, abandoned work or been bankrupt, dismissed for malpractice or sentenced to imprisonment except for offences committed through negligence or petty offences.

A government agency pursuing a project must hire a consultant to prepare a project appraisal report, which must meet the requirements set out by the PPP Policy Committee. The regulations require the appraisal report to comprise a study and analysis addressing such matters as technical benefits, operating costs, estimated gains, a comparison of costs and cost-effectiveness of different budget alternatives; alternative models for private sector investment; impacts of the project and means of mitigating negative impacts (environmental, national security, legal compliance and others); results of the required hearings; identification of risks and their management; and the financial status and other relevant information on the agency pursuing the project.

Once the appraisal report is done, the government agency must submit it to the responsible minister for consideration and approval and then to Sepo, after which consideration will continue in accordance with the procedure specified in law.

With a solid legal foundation laid, the success of PPPs in Thailand will depend on both project champions within the government and private-sector operators that have the flexibility to meet the requirements of their public-sector counterparts. If both of these come together, PPPs can be an excellent solution for Thailand's infrastructure needs.