

Positively Private

Thailand's Strategic Plan for 2015-19



Ahmet Yesilkaya
Consultant,
Tilleke & Gibbins



Weerawat Distapinyo
Attorney-at-Law,
Tilleke & Gibbins

When the Thai government enacted the Private Investments in State Undertakings Act B.E. 2556 (2013) (PISUA) – a new law regulating public-private partnerships (PPPs) that was designed to streamline and clarify the PPP process and boost private investment, especially in the infrastructure sector – measures were introduced to increase the effectiveness and transparency of the PPP process, something previously unseen in PISUA's predecessor, the Private Participation in State Undertakings Act B.E. 2535 (1992) (PPSUA).

The provisions of the old PPSUA, which were in effect from 1992 until 2013, were written in a way that allowed for a variety of legal interpretations, thus making for uncertainty regarding which projects were captured within the scope of the law. Although regulations had been issued under the old law to address the selection process, many

investors still perceived difficulties, which ultimately discouraged them from participating in PPPs in Thailand. Additionally, the old PPSUA lacked provisions to specifically guide the development of PPPs in Thailand, as it did not determine in which sectors PPPs would benefit the public and, therefore, should be promoted.

While the new PISUA – which applies to all projects (except petroleum and mining concessions) with a value of THB 1 billion (approximately \$30.5 million) or more – made only incremental changes relative to the older PPSUA in terms of approval procedures, it did set out a much stronger framework for comprehensive planning and quality of public-private ventures. This was evident in the regulations on the use of qualified experts and consultants for preparing an independent project appraisal report, as well as sections calling for a PPP policy committee, a PPP fund, and, as a main driver and guideline of

Table 1: PPP implementation time-frame

	Operation period										Remark
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
Group 1: Projects which must have private investment											
Development of rail transit system in city area											Started from 2011
Development of toll road in city area											–
Development of shipping port											Started from 2010
Development of high speed rail system											Expected to be completed in 2049
Development of telecommunication network											–
Development of high speed internet											Expected to be completed in 2030
Group 2: Projects for which the state should encourage private investment											
Development of logistics and distribution centre											Expected to be completed in the concession period
Development of toll road between cities											–
Management and maintenance of common ticket system											No information
Business development and management of airport area											No information
Development and management of water quality management system											–
Development and management of irrigation system											–
Development of solid waste disposal system											Started in 2013 and expected to be completed in 2035
Development of public school											–
Development of infrastructure for science, technology and innovation											–
Development of public health infrastructure											Expected to be completed in 2038
Management of medicines and medical devices											–
Development of convention centre											Started in 2015
Development of airport under supervision of government agency											No information
Development and management of shelter for poor, elderly and disadvantaged people											No information
Development related to digital economy											No information

Note: Information is subject to change after the hearing.

Source: SEPO

PPP policy, a PPP strategic plan.

The new law has also established a PPP development fund, which is to be used for developing the PPP strategic plan, hiring consultants, and helping agencies develop PPPs that are consistent with the plan. Among other matters, the strategic plan identifies sectors and specific projects in which PPPs would be of benefit to Thailand, the priority of

each, a target for private investment, and a time frame for implementation.

The PPP committee, which is chaired by the prime minister and vice-chaired by the finance minister, is now required to work with the State Enterprise Policy Office (SEPO) to prepare a five-year strategic plan for PPPs for the cabinet's consideration. The SEPO, acting as the secretariat, has the duty to prepare a

framework setting out the draft strategic plan, goals, target audience, and other details for the approval of the PPP committee. To ensure the plan reflects public needs, the PPP policy committee must also hold hearings to obtain input from state agencies and members of the public.

Once the hearings have been held and the committee has approved the draft strategic

plan taking into account the input from these hearings, it will submit the plan to the cabinet for approval and promulgation.

In addition, once the strategic plan has been published in the government gazette, it is binding on state agencies in terms of preparing and approving projects that fall under the strategic plan. Even the cabinet and the PPP committee are required to principally adhere to the strategic plan when they are making their decision regarding the approval of a project. However, if the cabinet finds it expedient to revise a strategic plan that is already in effect, it does have the right to approve revisions suggested by the PPP committee, and in such a case, the newly revised strategic plan would again have to be published in the government gazette to replace the previous one.

The current draft of the strategic plan for 2015-19, which marks the first time such a strategic plan for PPPs in Thailand has ever been submitted, completed the public hearing stage in March 2015 and is currently awaiting approval by the committee before being submitted to the cabinet. In this draft, it has been stipulated that projects have to be conducted as PPPs in the following six fields: urban mass rail systems, urban toll roads, commercial ports, high speed rail systems, telecommunication networks, and high speed Internet systems.

For 15 other fields, the current draft strategic plan recommends that the government encourage the participation of private investors, but in these fields, private participation is not mandatory and the relevant state agencies have the right to decide whether they want to use a PPP or whether they would prefer to fund the project entirely through budgetary support or the state agency's internal resources. In this group are fields such as inter-urban toll roads, solid waste disposal systems, airport management, terminals for transportation, packing, sorting, and distribution of goods, as well as adminis-

Table 2: Estimated investment amounts under the strategic plan for 2015-19

Project	Value (million baht)
Development of rail transit system in city area	567,928
Development of toll road in city area	3,035
Development of shipping port	124,435
Development of high speed rail system	389,492
Development of telecommunication network	28,000
Development of high speed internet	19,537
Development of logistics and distribution centre	14,584
Development of toll road between cities	451,078
Management and maintenance of common ticket system	600
Business development and management of airport area	No information
Development and management of water quality management system	31,080
Development and management of irrigation system	No information
Development of solid waste disposal system	3,504
Development of public school	5,000
Development of infrastructure for science, technology and innovation	40,650
Development of public health infrastructure	1,000
Management of medicines and medical devices	195
Development of convention centre	26,000
Development of airport under supervision of government agency	No information
Development and management of shelter for poor, elderly and disadvantaged people	No information
Development related to digital economy	No information
Total	1,706,158

Note: Information is subject to change after the hearing.
Source: SEPO

tration, management and maintenance of common ticketing systems. (see Table 1)

The current draft strategic plan also sets out the time frame for implementation of projects in most of the PPP fields (see Table 1), as well as the estimated investment amount for each field (see Table 2). It now remains to be seen whether this strategic plan, once enacted, will indeed become a driving force for increased private investment in Thailand's state undertakings. ■

Ahmet Yesilkaya is a consultant with the Tilleke & Gibbins corporate and commercial group. He deals with a wide range of clients in international commercial transactions, real estate matters, corporate structuring, and investment. Residing and working in Thailand since 2004, Yesilkaya has gained con-

siderable experience providing optimised legal solutions for international corporate clients both in Bangkok as well as on the Eastern Seaboard. Yesilkaya is a licensed German attorney-at-law, registered with the Berlin Bar Association, and speaks English, German and Turkish.

An attorney-at-law with extensive experience in business start-ups, Weerawat Distapinyo collaborates with the Board of Investment and the Industrial Estate Authority of Thailand to obtain promotional privileges and approval to commence industrial activities. Distapinyo also resolves issues related to the import and export of goods and tax. Distapinyo graduated with a law degree from Thammasat University and obtained a master's degree in taxation from Queen Mary University. He is a member of the Lawyers Council of Thailand and the Thai Bar Association.