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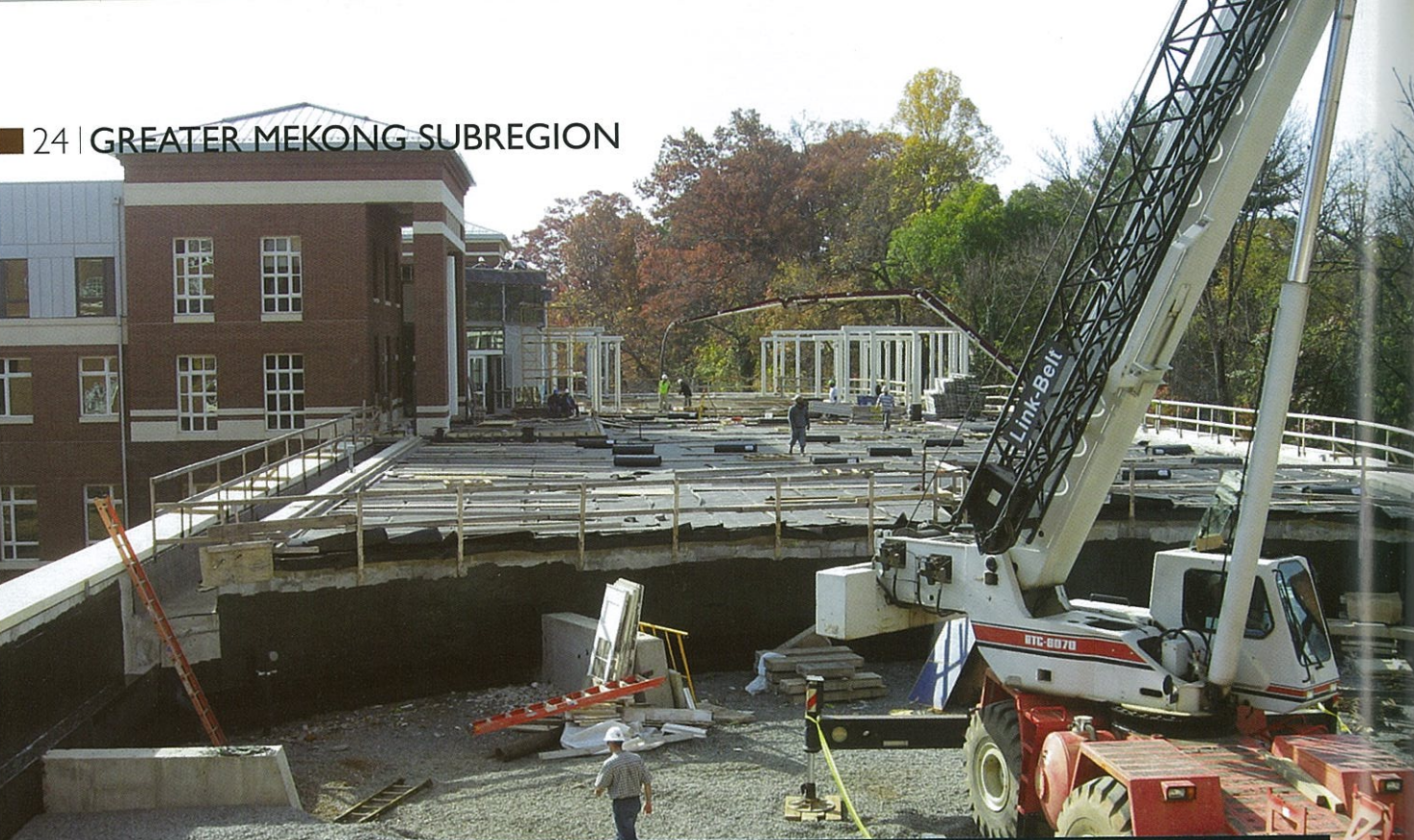
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NEW THAI PPP LAW IMPROVES PROSPECTS FOR PRIVATE PARTICIPATION IN INFRASTRUCTURE PROJECTS

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By enacting new legislation earlier this year, the Government of Thailand seeks to resuscitate its public-private partnership programme as part of its new infrastructure initiative. Public-Private Partnerships (PPPs) are projects pursued by a co-operative effort between the public and private sectors; most commonly in the form of joint ventures (JV).

PPPs represent a concerted effort to:

- Attract private investment into public sector projects in order to augment public resources and alleviate the financial constraints encumbering public infrastructure projects;
- Bring private sector efficiency and innovation together with public resources and effective oversight; and
- Streamline the development of major development projects.

Prominent examples of previous PPP projects in Thailand include the Bangkok Mass Transit

System and the Metropolitan Rapid Transit.

OUT WITH THE OLD

Until this year, public-private partnerships were governed by the Private Participation in State Undertaking Act, B.E. 2535 (1992) (previous Act). Uncertainties deriving from a lack of clarity, significantly limited the effectiveness of the previous Act. Although the objective was to ensure transparency in large-scale projects (valued at more than Baht 1 billion) with State participation, internal governmental processing procedures proved to be convoluted and unnecessarily time-consuming, thus hindering implementation.

The previous Act was focused almost exclusively on limited model types, such as the build-operate-transfer (BOT) and build-transfer-operate (BTO) methods, while most notably omitting JVs. Private sector confidence was undermined by unanswered questions regarding inconsistencies in interpretation as well as the circumstances under which the

State could unilaterally amend the contract terms.

In addition, an absence of mechanisms by which to supervise project implementation combined with insufficient technical, administrative and legal support left government agencies with limited abilities to oversee large and complex PPPs.

IN WITH THE NEW

Repealing the previous Act, the Private Joint Investment in State Undertaking Act, B.E. 2553 (2013) came into force on 4 April 2013



and is intended to breathe new life into public-private infrastructure investments. Although it includes language reminiscent of its predecessor, the Act adopts a fundamentally different approach by centralising authority and responsibilities under a single Committee of Private Investment in State Undertakings responsible for all facets of PPP projects.

Previously, multiple agencies oversaw various project components, consuming up to four years of processing time from the feasibility study to the ground-breaking ceremony. The new Act is expected to shorten the processing time to a more manageable 7-12 months.

The scope of application is far broader than addressed in the previous Act, as the new legislation focuses on joint ventures, which are defined as being between the State and a private individual by means of licensing or the granting of a concession. A new chapter also addresses the amendment and renewal of JV agreements. This chapter was undoubtedly added to respond to private sector concerns as to the circumstances that would allow government agencies to unilaterally modify JV agreements. The terms of contract renewal were largely unaddressed by the previous Act. Also, unlike the previous Act, the implementation of the new Act as well as its rules and regulations are subject to continuous monitoring and supervision.

To alleviate the lack of support mechanisms under the previous Act, Section 49 of the Act establishes a fund under the Ministry of Finance to support the preparation of the Strategic Plan, the government agencies in proposing a project in line with the Strategic Plan, the preparation of studies and analysis of projects, and the appointment of advisors. The Act also requires that government agencies retain the necessary expertise for each project they oversee.

A SIGNIFICANT STEP FORWARDS

The new Act undoubtedly represents a significant step forwards in creating a more conducive environment for the promotion of Public-Private Partnership projects. The Act addresses concerns about the incompleteness, inconsistencies and uncertainties of the previous Act.



Nonetheless, there remain problems which could handicap the success of the Thai PPP programme. These include (a) the lack of criteria to govern the selection and prioritisation of PPP projects, (b) the absence of criteria for selecting private participants for State undertakings, (c) the absence of standardised terms for JV agreements, (d) the absence of appropriate risk allocation guidance and (e) the failure of the Act to address private sector concerns about the Government's ability to unilaterally modify JV agreements. This last concern is particularly troublesome as the private sector will be reluctant to participate and invest in PPP projects without due reason for confidence in the sanctity of the JV agreements.



However, it is premature to reach any definitive judgments on the strengths and weaknesses of the Act. As Thailand begins to embark on a number of "Mega Projects" including a national high-speed rail system and plans for mass transportation in other major cities, yet-to-be-issued announcements and regulations will prove critical in the Act's implementation. If the foregoing concerns can be successfully addressed, PPP projects in Thailand will have a promising future.

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